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International Court of Justice

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F I N A L P L E A D I N G S

O F

DR. A R T H U R S E Y S S - I N Q U A R T

Presented in July 1946

before the

INTERNATIONAL MILITARY TRIBUNAL OF NUREMBERG

By

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YOUR LORDSHIPS !

HIGH MILITARY TRIBUNAL !

Nuernberg, the old august imperial city, which has given not only to the German nation but also to the world one of its most deeply significant painters, Albrecht DUERER, an unsurpassed sculptor, Veit STOSS, and the mastersinger Hans SACHS, has, on her ruins, become the stage for the greatest criminal trials which legal history knows. Nuernberg has seen within her walls not only the pomp of the old emperors, but the rallies of the NSDAP also took place there, year after year, as a part of that propaganda machine which understood how to put into motion millions of people by a gigantic, but also diabolical stage management, with flags and standards, drums and fanfares under the slogan of German equality of rights in order finally, in the extravagance of its aims, to lead a nation which has given humanity so much that is good and beautiful to the verge of ruin.

We have heard the indictment here which tries to prove in a comprehensi way that some men had conspired to conquer the peaceful world by the waging of wars of aggression. It was said that the waging of these wars not only violated the treaties which were supposed to prevent war, but furthermore the rules for a humane conduct of the war, and had also trodden under foot the basic rights of humanity in the most contemptible way. Justice JACKSON's passionate opening speech will go down into the history of this world trial like the speech of a Cicero against the conspirator CATILINA. We saw for months, how mountains of documents and a long chain of witnesses were supposed to confirm the indictment,

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and, on the other hand, how the defense as keeper and servant of the law was striving to help the Tribunal discover the truth. But in the gallery the representatives from all parts of the world were seated, and only too often the whole world held its breath, when there was a break in the dark fog banks and again and again made a glimpse into the depths of unsuspected crimes possible. But outside, before the gates of the Courthouse, stand the deeply moved German people, among whose former leaders the defendants after all belong. But regardless of how the trials will end, the defense must be given credit for one thing, namely that, with regard to the question of the guilt of the German people, one will never again be able to talk about complicity or collective guilt, perhaps rather about collective disgrace, because they were German men, under whose leadership crimes of the most horrible kind were committed! The curtain now rises once more on the final act of this world tragedy, in order to lend an ear again to the defense, and then to pronounce a sentence which must not only correspond to fundamental legal principles but also ensure that crimes such as the Prosecution describes will for ever be avoided.-

On 20 November 1945, at the beginning of the trial, the Presiding Judge stated that these trials are of great importance for millions of people in the whole world.- For this reason, he said, everybody participating in them has the solemn responsibility of fulfilling his duty without fear and without favor for anybody, and according to the principles of law and justice.

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This duty was often an almost too heavy a burden for the defense counsel! Not because of the extent of the material for the trials, not because of the abundance of legal questions which often were of a completely new kind, but because things were revealed here which are so monstrous and abysmalty degraded that a normal brain will not even believe the possibility of such happenings. In so saying I am not thinking of the prepared human skin, of the pieces of soap made out of human fat which were shown to us, I am not thinking of the systematic way in which millions of innocent people were tormented, tortured, slain, hanged or gassed. No, I am thinking of the many touching individual pictures which have made the deepest impression on me personally and probably also on everyone else. Once more, I hear the report of the village priest M.G.N regarding the shooting of the hostages from CH ISEL camp in CHATEAUBRIANT:

> "My father, we have not your religious conviction, but we are united in the love for our native country. We wish to die so that the French people will be happier! "

I visualize the march of the Jews from DRANCY which slowly approaches the place of execution, how the individual victims help each other to undress, how the little boy persuades his parents to die bravely, and how they carry an old woman whose lameness prevents her from staking the few steps to the pit herself, where the deadly bullet from the submachine gun awaits her.

I once more hear the testimony of the French journalist, MARIE-CLAUDE VAILLANT-COUTURIER who describes in deeply touching words, how the sacred experiences of maternity and female honor were shamelessly trampled under foot in the extermination camp.

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Auschwitz alone has devoured 3½ million people, men, women, and children! That is really the most terrible weapon of the indictment, that the spirits of all these innocent victims stand beside the prosecutor, admonishing and demanding revenge. But I do not stand alone, either. The many innocent war victims on the German side, women and children who have fallen victim to the terror attacks which violated International Law, in Freiburg, in Cologne, in Dresden, in Hamburg, Berlin, and Vienna, and in almost all other German cities, step to my side. My comrades from the Wehrmacht who, as honest and decent soldiers, have sacrificed their lives for the fatherland by the hundred thousands, young and old, faithful to their oath of allegiance stand by my side!

Personality. But even if they did not exist, if the defendant were all alone before his Judges, then it is even more my sworn duty as lawyer to stand helpfully at his side and to be his shield and defense, and considering the abundance of the indicting material, to call to you, honorable judges: "Do not judge in wrath, but rather search, like our Austrian poet WILDGANS who was a Judge himself, has written in the album of a young Judge:" It is the flower (Edelreis) which blooms under thorns!"

Before I now consider the indictment with its individual points, I should like to sketch a short picture of the personality of the defendant. SCHILLER's words in Wallenstein apply to him, too: "Distorted by the hate and favor of the parties, his character portrait wavers in history." The indictment, in the trial brief, calls him a cunning, coldly calculating, political opportunist who

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had a mission before his eyes. It is more than obvious that he misused his position as Minister, in order to deliver Austria to the conspirators by his double - dealing. He has committed atrocities in Poland and in the Netherland, in cold blood, and has trampled upon the rights of small nations to religious and political freedom of thought, unconcerned by constitutional obligations. GEORGE S. MESSERSMITH judges similarly in 1760-PS when he says that Dr. SEYSS-INQUART, with whom he himself had little personal contact - the defendant denies ever having met MESSERSMITH - had been completely insincere towards his friend, Chancellor SCHUSCHNIGG, according to reliable information he (MESSERSMITH) received. The statement that SCHUSCHNIGG and SEYSS-INQUART were friendly is moreover incorrect. MESSERSMITH had left Vienna in the spring of 1937. As all witness testify Dr.SCHUSCHNIGG had at that time only just become acquainted with SEYSS-INQUART. But MESSERSMITH added literally, that there is only one thing which may be said in favor of SEYSS-INQUART at that time, namely that he may have believed the German protestations which were made to him, namely that Austrian independence would be respected. Mr. GEDYE who was the Vienna correspondent of English and American newspapers for many years has also mentioned SEYSS-INQUART in his book: "Austria's Suicide" ("Der Selbstmord Oesterreichs") and has said about him: "He is a well - brought up National - Socialist which is twice as disturbing, a young, intelligent lawyer, of nice appearance and good manners, who clearly emphasized that he is opposed to the throwi of bombs and to noisy demonstrations, and who preaches in

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drawing rooms regarding the superiority of intellectual weapons over rough, material methods. Martin FUCHS, the author of the book quoted by me "A Pact with HITLER" (" Un Pact avec HITLER"), says concerning the defendant: "SEYSS-INQUART was known to the public as a National-Socialist, but as a practising Catholic and representative of an Austrian Nazi movement which was to keep Austria on the side of the Reich!" In Austria they now condemn the defendant, because he brought about the German entry by his telegram. Many a friend of mine who has returned from Dachau and Mauthausen has therefore reproached me that I represent the man who betrayed our country, as defense counsel before the Tribunal. Dutchmen whom I questioned concerning the personality of the defendant told me that the Dutch people hated him as HITLER's supreme representative in the country especially since he had stated at the beginning of the occupation that he came as friend of the Dutch, and that he had deceived them in this respect.

I myself knew the defendant in Vienna only as a professional colleague. He was generally considered as an able and decent lawyer, and politically he was closely in touch with N ationalist circles, without being outstanding in any particular manner. But in the many discussions which I have had with the defendant in the course of the trials, I have tried to make an exact picture of his personality. We often talked together about our families, our common experience at the front, especially in the Tyrolese mountains, where he was a brave and cautions company leader to his men and where he was wounded. He also liked to talk about daring excursions into the mountains, but he liked best to talk about music, and I have often thought that a man who could speak so sensitively about Bach,

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MOZART, BEETHOVEN and BRUCKNER cannot be a monster and above all not a cruel cold-blooded criminal because love of nature and music can find an abode only in the heart of a good person!

His political program was the "Anschluss" idea and, considering his origin, this is also easy to explain. His immediate home is the old mining town of Iglau, a German language enclave in the Slavonic sea. At an early age he learned what a small-scale fight means between two nations facing each other in enmity. He was deeply moved to learn that time's storms, last year also swept over his immediate home, and that Iglau which had been German for 800 years, will be so no more! Therefore, in judging the defendant, we should take account of the fact that it was the Germanic Borderlands that have at all times experienced the greatest national distress and felt more strongly and fervently the idea of the great German Fatherland than the nationals of the rest of the Reich, lulled into self-sufficiency born of self-confidence. - Thus it is no accident that leading men in the Anschluss-Movement whose names stand out in my Document Book came from the Sudetenland. Doctor Otto BAUER, the late leader of the Socialists, comes from Reichenberg, and State President Dr. Karl RENNER likewise comes from Untertannowitz in Moravia, that is from German Sudetenland.

Inasmuch as I did not meet the defendant again since the fall of 1938, until I met him here again on prison, I have asked one of his colloborators in Holland who also enjoys the respect of the Dutch and who was no National-Socialist, and as Judge of the High Court,

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a position he held in former times, can be relied on, for an objective opinion on the personality of Dr. SEYSS-INQUART. He writes:

"In his work his clear, keen thinking, and the systematic manner in which he fully applied his many-sided talents in carrying out his duties struck me at once. [Unlike many of his equals, he never obstructed the sense of reality by fanatically preconceived notions, but, as is fitting for a conscientious politician, always strove to approach things soberly and without prejudice, and to see them as they really were. That also is why he developed the ability and inner composure to listen calmly to other people, including his subordinates, to deliberate with them and to yield to their opinion...." "Social life in his house was on a dignified and unusually high level. The atmosphere of the house revealed at once that the host was a man of culture. He knew no hate, and whenever he thought he saw hate approaching, he never answered with hate or revenge, but only with measures deemed appropriate for the prevailing situation.] It is the great tragedy of his life and work that in the person of HITLER and several persons among those who were his closest co-workers, elements crossed his path which were stronger than he ..." As an intellectual and a mentally cultivated person he became immediately suspect to the main persons in power in the Party bureaucracy surrounding HITLER (BORMANN) and in the SS administration (HIMMLER) although he wore the golden badge of

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of honor of the party and occupied a high honorary rank in the SS. He continued to be the young Party member who came from the ranks of the intellectuels and were always regarded with mistrust. For those elements, however, he was too "soft". Altogether, however, it was his hope that he might increasingly prevent independent sections in the Reich from trying to work their way into his sphere of action as he himself gradually won the Fuehrer's confidence to an ever greater extent. His relation to the Fuehrer was to become fateful to him, as I already mentioned. The Fuehrer's amazing knowledge, his never-yielding, all-conquering energy and his outstanding successes in the field of home as well as foreign policy during the first years after the so-called seizure of power, drew SEYSS-INQUART - as also happened to outstanding men in foreign countries - under HITLER's influence. He became a loyal follower of HITLER and sincerely believed that in the latter love for the German people was the prime mover of his actions. He also believed faithfully - in any case for some time and during the extreme distress of the German people - that he must continue clinging to HITLER even though the recognition of his weaknesses and faults dawned upon him..." "However, I am firmly convinced that in such manner he, as well as a great portion of our people, unwillingly, as they were, became a sacrifice, a willing tool of the demoniacal power of HITLER....."

This is the opinion of an upright German Judge !

Conspiracy. The Prosecution bases the trial on the concept of conspiracy, in an endeavor thus to forge a ring around the defendants which is to combine them all in one common responsibility. My learned colleagues have already spoken

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of the concept conspiracy and its consequences in this trial. To repeat these statements would be to carry coals to Newcastle. But because this is the leading theme for the trial which has ascribed responsibility for the world-shattering events, above all to my client, I should like to subnit to the Court a few additional ideas on that subject.

In going through the records of history, we often run across stories speaking of men who combined for the overthrow of a ruler who was disliked, or a system that was hated, and for them to seize power. All these cases were listed under the superficial, collective term "conspiracies". In the book he published in Paris, entitled "The Technique of the State Plot" , Malaparte, an Italian, tried to describe the technical methods applied in conspiracies and revolutions, beginning with the time of Catilina down to Hitler and Mussolini. Even this survey of technique will be sufficient to show how unjustified / it is to dub all these undertakings conspiracies, if it is intended to embrace within this term a definite concept such as known in penal law. In any case it is certainly not possible to simply classify all these things, in popular terminology briefly termed conspiracy, under the caption of conspiracy according to the concept of the Prosecution. When Guy Fawkes and his comrades, at the time of James I, tried to blow up the English Parliament in the so-called "Gunpowder Plot", perhaps this was a real conspiracy. Up to now, the English nation on the 5th of November of every year, celebrates with fireworks and bonfires and the burning of a

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straw dummy, the anniversary of the day which saw the happy prevention of the plot. It would be a mistake, however, to simply term any kind of cooperation for political purposes a conspiracy, because - and it is particularly important to repeat and stress this - thanks to the vagueness of colloquial usage, it became always possible again to use the word "conspiracy" in political fights in order to justify thereby, because of lack of adequate legal grounds, the process of defaming and destroying political opponents who, in the light of history, will appear, perhaps, as the representatives of the nobler cause. Because in this trial Holland is of particular interest to me, I wish to cite two illustrations from its history. The one is to recall Holland's fight for liberty against Philipp II, which two of our greatest poets - GOETHE in Egmont and SCHILLER in his "The History of the Revolt of the United Netherlands" (Geschichte des Abfalls der Vereinigten Niedorlande) chose as subjects for their dramatic representations. SCHILLER writes about the heroic death of the two brave Dutchmen, Egmont and Horn". The insulted ruler had pronounced both Counts guilty, because they had encouraged and assisted in the outrageous conspiracy of the Prince of Orange and because they had protected the confederate noblemen and had given bad service to the king and the Church in their governorships and other officers. Both were to be beheaded in public, their heads were to be mounted on spears and were not to be removed until so ordered by the Duke. All their possessions, feudal tenures and rights were confiscated by the Royal Treasury. The verdict was signed by the Duke alone and his secretary Pranz, and nobody troubled to obtain the consent of the rest of the criminal counsellors....."

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Two decades later during the well-known period of 1588 to 1598, the young Dutch State had been given its final safeguard,thanks to the joint leadership of the Republic by the Ratspensionaer Johann van OLDENBARNEVOLT as Statesman and through Moritz von NASSAU ORANGE as Field Marshal. But the opposition of these two men was to lead to a tragic result. Both, the highly respected, aged Ratspensionaer OLDENBARNEVOLT, as well as his friend Hugo GROTIUS - the father of international law - were imprisoned because of conspiracy. Whilest de GROTIUS saved his life through escape from his prison cell in a book case, OLDENBARNEVOLT's head fell because - so the verdict said - he had deeply afflicted the Church of God. The unity of the State, however, had been saved. Spain's dominion over the sea passed to the small Republic of Holland.

For the French Prosecutor I should like to cite from the history of his country, France, of an evidently erroneously termed case of conspiracy. LOUIS XVI was accused of conspiring against the nation and was found guilty. - Citizen DOSEZE, on 26 December 1792, in the first year of the Republic at the bar of the National Convention, served as his defense counsel. His pleading was probably one of the most moving legal pleadings ever delivered, a discourse in which the defense counsel directed himself at the same time against another foe of criminal justice, a foe for political reasons or because of political passion, namely against a violation of the legal principle nullum crimen et nulla poena sine lege. Undaunted and unafraid he expounded, among other things the following: "Where there is no law which can serve as directive and where there is no judge to make the pronouncement, one should refrain from accepting the general will as a foundation.

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The general will cannot as such speak either about a man or about a fact. But if there is no law according to which one can judge then it it also not possible to render judgment, then one also cannot think of conviction."

We still find today this principle of nullum crimen nulla poena sine lege firmly rooted in almost all law books. We find it in the German and in the Austrian penal code, we find it in article 1 of the Dutch penal law and we also find it in French law in article 4 of the "code penal" which states: "Nulle contravention, nul delit, nul crime, ne peuvent etre punis de peines qui n'etaient pas prononcees par la loi avant qu'ils fussent commis."

The American weekly "Time" wrote with justice in its 22nd No., 26 November 1945, in an article: "Whatever laws the Allies attempt to establish for the purposes of the Nuernberg trial mostly did not yet exist at the time when these acts were committed. Since the days of Cicero, a punishment "ex post facto" has been damned by the jurists." The fact that this principle has not lost any of its significance even today while this trial is in process, but on the contrary kept its full meaning, results from that, - I want to remind again the French prosecutor - that the French constitution which was submitted to the National Assembly on 19 April 1946, establishes specifically as statute of human rights in article 10: "The law has no retroactive force. No one can be convicted and punished, except according to the

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law which has been promulgated and publicized before the deed which is to be punished. Every person accused is considered under reservation as innocent unless he is declared guilty. No one can be punished twice for the same deed." What is now human right for the French, must necessarily remain human right for the Germans.

This principle is not only rooted firmly in national law, but also in international law. When after World War I., the Allies demanded from the Netherlands the extradition of Emperor Wilhelm II who had found sanctuary there, the Dutch government refused the surrender of the Emperor with the following words: "Article 227 of the treaty of Versailles has come into force on 10 January 1920, and it does not figure on the list of punishable acts which are considered in Holland's laws or in the treaties which Holland concluded. This new crime was also not contemplated by the penal legislation of the countries which demand the extradition of the emperor."

A. MORIGNHAC and E. LEMONON, Droit des gens et la guerre de 1914-18, V.II.,p.572: express themselves similarly: Nulne peut etre puni autrement qu'en vertu d'une loi auparavant adoptee et publiee, pour cette raison, ce qu'on exige de la Hollande c'est de collaborer a un proces contraire a l'idee même de la justice."

When in the year 1935, the idea of analogy found its way into German penal law, this innovation also found severe criticism in the circle of jurists outside of Germany. The second international congress for comparative jurisprudence held in The Hague in the year

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1937 formulated a resolution against the analogy in penal law. In this resolution, the congress expresses itself in favor of the principle "nulla poena sine lege." See Voeux et Resolutions du Douxieme Congres International de Droit Compare, La Haye, 4 - 11 Aout, publie par les soins de M. Elemer BALOGH, p.69.

From the above-mentioned statements it follows that it is legally inadmissable to apply principles in this trial which lack a legal basis. Continental law does not know the concept of conspiracy. Austrian law, which could come into question as the national law for my client, does not know this concept either. There are at best very small similarities if we point out that the explosives law of 27 May 1885, Reichsgesetzblatt 134, article 5 already declares the contemplation of the execution of a crime with explosives as punishable. Article 174 Ic of the penal code makes theft a crime if the thief commits thievery as a member of a gang which has banded together for the common commitment of thievery. German law recognizes the responsibility under the penal code for the act of another only as accomplice, instigator, and helper. Conditions in French law are similar, and articles 59,60,89 and article 265 of the "Code Penal" are pointed out briefly.

That this fact is not clear and at least dubious, is also admitted by the respected Russian teacher of international Law, Professor A.N. TRAININE in his book "La responsabilite penale des Hitleriens" (Publisher: La presse francaise et etrangere, O. Zeluck, Editeur, Paris 1945). He states in page 13:
"The problems of international penal law

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have unfortunately been studied very little, there is a lack of a theoretical, clear definition of the fundamental concept "International Crime" and a well-ordered system of this law remains still to be created." According to the prosecution, the aim or the means of the conspiracy are crimes against the peace, against the rules of war, and against humanity. Professor JAHRREISS has already spoken extensively about the liability for punishment of individuals because of the violation of international peace, and has described and given due recognition to the status of non-German international jurisprudence. But since jurists of the German language have also concerned themselves with this question, I would like to take the liberty of an additional remark.

The well-known Austrian scholar of international law Alfred von VERDROSS has established in his book "International law" Publishers Julius Springer, Berlin 1937): "According to prevailing opinion, subjects of an international legal crime can only be states as well as other legal corporations immediately subject to international law, but not individual persons ....."

There would only be an international obligation of an individual person when international law itself would connect and order a state of facts with a consequence of injustice that these standards are applied immediately to the state of facts established by a person. Only by that will persons who according to valid law are only subject to national civil and penal law, be bound as an exception by international law itself ....."

After these short supplementary explanations of the legal bases of the trial, I turn to the prosecution

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which accuses my client of having participated in the seizure and taking of control in Austria as a conspirator, and to have committed war crimes and crimes against humanity in Poland and in the Netherlands.

Thus the first act takes place in Austria, and the second one in the Netherlands, after a short interlude in Poland.

East of Berchtesgaden is the Obersalzberg at an altitude of 1,000 meters, a mountain at the northern base of the "Hohen Goell", covered with meadows and forests, with scattered farm houses and with a wonderful view. Above the old road is the impressive Berghof which resulted from the reconstruction of the Wachenfeld House in 1936. It is here, not on the Rhine, not in the Teutoburg forest or on the shores of the North Sea, where Adolf HITLER established his residence when he looked for relaxation far away from the Reich Chancellery. Hidden by a small hill, the house of General Field Marshal GOERING lies behind the near corner of the house. Adolf HITLER stands at the window thinking and his gaze glides over the meadows and valleys to the snow-covered mountains which shine a purple red in the light of the evening sun. The country which is protected by these mountains is Austria, his homeland. It is a German land, free and independent and not subject to his will as the Reich, whose absolute Fuehrer he has become. When he wrote his life work in the fortress Landsberg, he wrote right there on the first page of his book: "German Austria must return into the great German fatherland. "The shadows of night rise slowly from the depth of the valleys and his thoughts glide over the mountains to the old imperial city

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on the Danube which he loves and hates at the same time. It is the city of his joyless youth, filled with want and misery. In his book "Mein Kampf" he compares this city with Munich now and says about the latter: "Munich, a German city, what a difference from Vienna, I get sick when I think back to this racial Babylon." And still, this city remains the goal of his longing and he calls this same city in the March days of 1938 a pearl to which he will give the setting which its beauty deserves. And on his table lies a book: "The History of German Austria". HITLER read this book again and again: it is the history of his homeland, and we also want to leaf through it a little, as far as time permits it here. We read: Austria was throughout many centuries one of the strongest pillars of German life. Its evolution, its rise, and its descent form a considerable part of German history. Austria was and is a piece of the German glory, and German suffering. Austria has received inestimable strength, from the old Reich, but she herself has performed much of greatness and value for the expansion of the entire German culture. Her historical beginning goes back to the Franconian Charlemagne who created the first "Ostmark", for the protection of the Reich against the East, she became a victim to the advance of the Magyars. The victory of the German king Otto I at Lechfeld in 955 is the hour of the rebirth of an Austria which now remains, under the rule of the Franconian house of the Babenbergs, the rampart against the East for almost three centuries. When the last of the Babenbergs fell in the fight against

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Austria came to the Alemanian house of the Habsburgs which was to bear throughout centuries the imperial crown of the Holy Roman Empire of the German Nation and was to be by its predominant position the strongest shield of the Reich. The mystic strength of the Reich idea gives to Emperor Frederick III. the unshakable belief in the universal future of the house of Austria: Austria orit in orbe ultima. Under Maximilian, Vienna becomes the main seat of humanism. Karl V. goes on beyond the nation and is filled with the world power idea of the middle age empire. The defense and liberation of Vienna in the year 1683 is a deed by all Germans of the greatest significance. Under the ruling colors of the German king, Catholics and Protestants, sons of all German tribes, fight for the fate of the capital of Christianity. In the 18th century, in the clash of the territorial states against the Reich, princely dominions against the Reich concept, German dualism arises, which from now on was to be the otherwise tragic fate for the Reich and Austria. Austria and Prussia, Maria Theresa and Frederick the Great. The great empress and the great king. The old Roman Empire of the German Nation was destroyed in 1806, in the clash of the two powers. The Reich died, but the Reich concept lived. At Leipzig, in 1813, Prussians and Austrians fought shoulder to shoulder under Schwarzenberg, Scharnhorst, Gneisenau, and Bluecher for the liberation from the yoke of the Corsican tyrant. On 11 January 1849, the deputies of all German states assembled at Frankfurt-on-Main for the constitutional assembly. The Austrian delegate Bergassessor Karl WAGNER from Styria spoke

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at that time the memorable words: "Leave an opening for us so that we can enter; we shall come, unfortunately perhaps not all of us anymore, we, Austria's Germans shall come, how and when, who can tell? Who can read in the book of the future? But we shall come! "

In the year previously, in Paul's Church, where the delegates of all German lands and states had met, the poet Ludwig UHLAND as delegate spoke the memorable words: "May it be that it will always be Austria's job to be a light for the East; it has a closer, higher job; to be the artery in the heart of Germany."

But on the battle fields of Koeniggraetz in 1866, a community of a thousand years between Austria and Germany was destroyed and Austria was forced to leave the German federation. How unsatisfactory the solution of the German question by Bismarck's forced exclusion of Austria from the union of German states was , was also recognized in the Reich, where Paul de Lagarde wrote in 1875:

" But despite this, 1866 and the German Reich is an episode. Nikolsburg cannot seperate what has been decided by geography and history to be together, if this being together will not be a union for a long time yet."

But once again nevertheless before the Hapsburg double eagle sinks down for ever, Germans and Austriansfight in 1914 – 18 shoulder to shoulder in the faithfulness of the Nibelungen for the freedom of the fatherland.

The common history of almost a thousand years, but above all the common lahguage and origin, the same customs and the same mode of life, demand the closest community,

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yes unity in the entire field of spiritual culture, poetic creation, and scientific research. If here, the Austrian shows a special structure, then this is above all the fact that especially in the field of the art of poetry and music, he has achieved performances which surpassed the creation of other German tribes by far or at least were equal to them. As it can also be emphasized, that the living together centuries long with other nations makes the Austrian stand out, to equalize contradictions and to bridge inequalities. His joy in the sensual, in the colorful and his sense for the superficialities of life may have made him especially suitable for this. The narrow frame of the trial imposes justified limitations here on an extensive description of the mutual cultural life. I limit myself to the quotation of names: "The singers of the Nibelungenlied, the Minnesaenger, Walther von der Vogelweide, Ulrich von Lichtenstein and Oswald von Wolkenstein. The humanists Aeneas SYLVIUS and Konrad COLTIS, the orientalist Hammer-Purgstall, the poet of the "Wehrmannslieder" von COLLIN, the classical dramatist Franz GRILLPARZER, the poets of the Revolution RAIMUND and NOSTROY, STIFTER and BAUERNFELD, the homeland poets STOLZHAMMER and ROSEGGER and finally Rainer Maria RILKE, Franz WERFEL, Anton WILDGANS and Hermann BAHR. When I turn to the magic world of music, then this is a horn of plenty of the most illustrious names: MOZART, HAYDN, SCHUBERT, the waltz kings LANNER and STRAUSS, the symphonic composer Anton BRUCKNER, they all were Austrians. But is it not a symbol of spiritual unity that just as the North-German poet HEBBEL, also BEETHOVEN and BRAHMS made Vienna with its sense for art the permanent city of their work?

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There is no German music without Austria. But Austria did not only make her proud contribution to the cultural life of the German people in the field of art, but also in the fields of science and technology.

But let us return to the Obersalzberg. If HITLER, the daemonic psychopath, loved his homeland with the love of a suitor turned down, then the love of Hermann GOERING was of an entirely different kind. He also liked to look over into nearby Austria. He spent the time of his youth there; it was not joyless and empty.

In the land of Salzburg with its old Bishop city, its lakes and mountains, Hermann GOERING learned to know Austrian characteristics, learned to love the people and country. What a joy it was for the courageous huntsman and later aviator when he got the first chamois in the cross-hairs of his telescopic sight, in Felsenkar. When he was severely injured by a burst of machine gun fire, on 9 November 1923 in the Odeonsplatz in Munich, faithful friends, accompanied by his wife Karin, who was herself deadly ill, then brought him away from the pursuing bailiffs over lonely wood trails into the free Tyrol mountains of Austria. A large relief, in which already long before the Anschluss, Austria was marked in the map of Germany without borderlines, shone in the large hall of Karinhall. But Hermann GOERING was also head of the Four Year Plan and knew that Austria was not only beautiful and rich with honors, but that she also owned the Erzberg where there is ore steel for the forging of guns; he knew the rich forests of Austria where there was wood for cellulose, for

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the construction of ships and for rearmament, it was not unknown to him that there was in Austria the largest beauxite and magnesia sources of the world, and that Austria had the rich petroleum wells at Zisterndorf. Only power makes right! If Germany wants to have her say again in the world, then she must have a strong army and a strong navy. And for this reason he loved Austria!

Hermann Goering also never denied this, his conviction, and he expressed this repeatedly to the diplomats of the great powers. For instance, he stated openly to Lord Halifax, that it was an integrated part of German policy, regardless what government was in power, that the moment had to be created so that the unification of the two brother nations of purely Germany origin and blood could take place. He has also testified with human candor as witness Before the Tribunal that when the question of the Anschluss came into its acute stage, he had grasped this long and ardently longed-for possibility for the total solution and that he takes upon himself the responsibility for everything which happened then, one hundred percent. He is therefore also to be believed when he stated further that he would do everthing therewith so that the Anschluss would not lead to an endangering of the peace.

The massed common will of the two great persons of the Third Reich to take over Austria at the opportune moment, is the key to the solution of the Anschluss question. For that, one does not require a conspiracy; whoever also participated were figures on the chess board of the two men, supers in the great theater of the world.

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But let us return to Austria. Only if we know the history of this country in the time from 1918 to 1938, then are we in a position to judge the role of the defendant in this question justly.

I have already pointed out in the presentation of evidence that according to my opinion, three reasons led to the Anschluss, and have also attempted to explain this by the documents submitted to which I refer herewith:

" 1. the economic want,

2. the disunity of the democratic parties resulting from this and

3. the attitude of the great powers toward Austria, especially during the critical days of March 1938.

Dr. Karl Renner, the federal president of the Republic of Austria who enjoys the confidence of the four occupying powers and on whom the entire Austrian people look with respect because he has stepped to the helm of the ship of state, for the second time in a period of serious emergency has described the history of the Anschluss very appropriately in a memorandum in 1945: "The political reason why the Anschluss idea got hold of almost all of Austria at the conclusion of the first World War, lay in the repeated proclamations of the victorious powers that the war was waged for the "right of self-determination of the nations," that every nation had a claim to her own, complete, national state, and that the peace would fulfil this requirement. ....."

" But this political reason was not decisive for the masses. Austria is a mountainous country with much too little arable land, a country of an entirely one-sided economic

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structure, its capital itself shelters a third of the population, its industry nourishes a large part of the latter only by working for its neighbours, receiving from them raw materials and bread. The sudden separation of the high agrarian parts of the previously uniform tariff territory of the Danube Monarchy, the measures of the successor states in 1918 introducing high protective tariffs deprived the country simultaneously of its food sources and its export territories. The fear not to be able to feed themselves and not to be able to find work at home, the sudden limitation of the labor market were the factors which made in 1918 the "Anschluss" (annexation) appear as the only possible solution. One cannot talk about a national Chauvinism of the Austrian working class, so much the less so, as this class had its origin to a very high percentage in parents of non-German blood and who had hardly lost their ties with the homeland. The overwhelming competition of the Reich German and Czechoslovakian industry loomed menacingly before the workers of all professions in this small country, cut off from the sea and poor in raw materials, which was afraid not to be able to stand up against this competition. To understand first of all this economic situation means to understand the "Anschluss" movement and brings the realisation, how HITLER's boastful announcement that he had eliminated unemployment in the world, had to make such a deep impression on the Austrian working class, that the desire to prevent the Anschluss was so weak within this working class at the beginning ..... "

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I have in front of me an economic-statistical comparison from the year 1938. There are a few figures only, which speak volumes:

Population:	Germany	Austria
	68, 150 000	6, 710 000
area per square km	470 714	83 868
change in population		
1936	plus 7.2	minus 0.1
	per 1.000 inhabitant	
Unemployed 1934	2. 353 000	363 000
" 1937	573 000	319 000

Austrias Foreign Trade 1937

Export:	To Germany	179,8 millions
	To Italy	172,6 "
	To Hungary	111,2 "
	To Czechoslovakia	87,5 "

With the decision of 5 Sept. 1931, the Permanent International Court at the Hague declared the customs union between Germany and Austria incompatible with the Geneva protocol of 4 Oct. 22 by 8 votes against 7. This was the last attempt of the governments to achieve a closer mutual state-legal relationship with the express accord of the victorious powers. It failed. Wasn't the conviction bound to arise in the minds of fanatical "Anschluss" partisans that this paramount national aim could only be achieved through their own initiative?

A year later the deficit of the Austrian Foreign Trade reached 613 Million Schillings. Dr. DOLLFUSS concluded on 15 July 32 a loan agreement in Lausanne

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under the conditon that the "Anschluss" problem would be put off for another 10 years. The ratification took place during the session of the National Council on 30 August 1932 with 82 votes against 80. In the federal council, the Social Democrat KOERNER, at present mayor of Vienna, had protested against this law in view of a closer community with Germany. HITLER came to power during the year after. The Social Democrats saw their party dissolved in the Reich the trade unions crushed, they saw the Reichstag fire and the starting persecution of the Jews, and their leaders turned away from the Anschluss idea. The catholic circles, who wanted to fortify the Catholic element in the Reich by the Anschluss also turned away because of beginning persecution of the clergy in the Reich, and only the National Socialists alone whose membership had increased ten times within a short time were in favor of the Anschluss. As Dr. DOLLFUSS had eliminated the parliament and thereby the way to power by means of votes, the National Socialists, under the leadership of land inspector Theo HABICHT, aspired with all means to the power in the State. It comes to the bloody events of the year 1934. Dr. DOLLFUSS is killed by the hands of assassins and his successor Dr. SCHUSCHNIGG attempts to restore the order in the deeply shaken state system. The Socialists, however, remain sulkily aloof because of the February events of the year 1934. Under the foreign political aspect, the situation changes, too. While Italy in the year 1934 still stood on Austria's side and while MUSSOLINI had deployed his divisions on the Brenner menacingly against the North, the Ethiopian adventure had forced Italy on HITLER's side. Austria is forced to follow the changed course and

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concludes also the agreement of 11 July 1936, in order to improve the economic situation. Germany, recognizes the independence of Austria in this agreement and ceases the economic war. The price for that, however, is a series of measures which give the National Socialists in Austria a new boost. In order to extend the small platform of his government and in order to bring about a real satisfaction, Chancellor Dr. SCHUSCHNIGG declares to invite also the so-called Nationals to cooperate. Among these men is also the defendant, who then becomes Austrian State Councillor in May 1937. The idea of the Anschluss constituted his political program as already mentioned above. He never tried to hide this fact. He also comes, from the ranks of the National opposition a factor which must not be overlocked. The Anschluss also brought him nearer to National Socialism and it seems immaterial to engage in long investigations, at what time he actually became a formal member of the party. Among the documents confiscated at his arrest, there was in any case also his membership card with the number over 7 million. It is known, however that in Austria the so-called old fighters were given a membership number below 6, 500 000. This statement concerning the party membership has also been confirmed by the witnesses Gauleiters RAINER and UIBERREITER. When the new State Councillor then paid his first visit at his assumption of office to the Fuehrer's deputy HESS, the latter is very polite but cool and he regrets that SEYSS-INQUART was not an old fighter. The task of Dr. SEYSS-INQUART is to supervise the execution of the July agreement.

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and to act as a mediator between the Austrian Government on one hand, the national circles on the other hand and the Reich. This task has been a thorny and ungratifying one. The patriotic circles, namely, could not forget the terror of the National Socialists during the DOLLFUSS period. The National Socialists, whose leader was Captain LEOPOLD by that time, were not satisfied with the methods of the national representative SEYSS-INQUART with the government. There are constantly differences of opinion between these two men, which go so far that /SEYSS-INQUART wants to give up his mission to bring about an agreement. I refer in this connection for the sake of brevity to documents 44 (letter of State Secretary KEPPLER to General GLOBOCHNIK), 45 (GOERING's telegram to KEPPLER) and 46 (USA 764) of my document book. There occur continuous violations of the July agreement and the Austrian Police finds the "coup d'état" plan, known as TAVS plan, which strives for a change of the government by violence. Minister Guido ZERNATTO has declared the defendant had remained aloof of all these endeavors. (Doc.47 of my document book). Then came the conference of 12 February 1938 at the BERSALZBERG. The course of this confernece is well known. That the defendant discussed things on the evening before this conference not only with ZERNATTO, the representative and intimate friend of the Chancellor in the government, but also with the national leaders becomes understandable if one considers again and again the at all times openly declared role as mediator by the defendant. The latterjust had to know also the claims of the opposition, if at the conference of the two statesmen at BERCHTESGADEN

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a clarification of the differences of opinion was to be accomplished. The defendant cannot be charged with playing a double game within the framework of a conspiracy because the National Socialist Party tried to exploit the knowledge of the situation to their profit, and that in sending out MUEHLMANN was quicker than the unsuspecting Chancellor SCHUSCHNIGG. There, too, it must be referred to ZERNATTO, who died in exile and who declares that he was under the certain impression, that SEYSS-INQUART had not yet knowledge of the agreements concluded at the OBERSALZBERG. On the basis of this agreement SEYSS-INQUART was appointed Minister of Interior and Security. He goes in that capacity to Berlin in order to pay a State visit to the chief of State of the German Reich and in order to present to him at that occasion his political program for the relationship of the two States, which is known from the File Notes (Exhibit No. 61) submitted to the Tribunal. The testimony of the defendant as witness of this conference appears completely believable. HITLER had at that time obviously not yet decided to carry out the Anschluss. It must at this point be referred to the testimony of the defendant GOERING, who testified the following on 14 March, when examined as a witness: " I was not present in Berchtesgaden, I did also not agree with this agreement because I have always been against every fixation which again extends this state of suspension". Through the agreement of Berchtesgaden the activity and propaganda of the Nazis in Austria had been permitted to a certain extent. The 2000 party members, released from prison on the basis of the amnesty and the

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members at least a part of whom had returned from the Reich, were especially active in the federal states to an increased extent, for a rapid increase of the Party and used HITLER's Reichstag speech of the 20 February particularly as a signal for hostile demonstrations against the State for the purpose of acceeding to governmental power in the shortest time. Not only SCHUSCHNIGG but the great mass of the working class now realized the dangerous character of the situation. The menacing peril caused past differences to be forgotten, and negotiations between Schuschnigg and the Socialist labor leaders and the Christian trade unions seemed to provide an insurance for the defeat of the imminent assault of Nazism, by the constituion of a common defensive front of all democratic forces. Prompt action was necessary and SCHUSCHNIGG proclaimed his plebiscite. The whole country awoke from its lethargy. Workers and peasants were called up to defend their country and the electoral preparations carried out under the leadership of ZERNATTO, in the short time available, in the factories and in the very remotest mountain valleys. It was clear that this attempt of Chancellor SCHUSCHNIGG to swing the helm around and alter the course at the last moment could not fail to elicit the resistance not only of the National Socialists in Austria, but also of those in Germany. HITLER raved and MUSSOLINI had unfortunately only too good a reason in warning SCHUSCHNIGG, before the election, with the hint that it would be a bomb which would explode in his own hand.

And now, let us turn back to the defendant. He was not only a government member, he was the trustee of the national opposition and the guarantor for Berchtesgaden before the Reich.

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If the prosecution accuses him with having given SCHUSCHNIGG his word of honor with reference to the election and not having kept it, that is not correct. Reference is made, I understand to the speech held by Gauleiter [illegible] on 11 March 1942 before the Carinthian party members. On page 12 of this document, 4 [illegible] 5 PS, it is disclosed that Zernatto's lady secretary was a secret member of the NSDAP and betrayed the plebiscite plans to her co-members as soon as she learned them. RAINER says we already knew the whole plan at 11.3[illegible] p.m. that same evening! The protest formulated by SEYSS-INQUART in the name of the Nationals to the Chancellor against the plebiscite was indeed entirely justified juridically. Beside the fact that there could be no security at such short notice for a proper vote, the vote itself was not constitutionally legitimate. Article 65 of the Austrian Constitution of 1 May 1934 specifies exactly under what circumstances the nation can be called upon to vote. Dr. SCHUSCHNIGG, therefore, supports his proclamation of the election upon Art. 93 of the constitution, which Article merely says generally: The Federal Chancellor sets down the directives of policy." The execution of the election was incumbent upon the National Front, i.e. the political organizations. The subsequent developments are well-known, particularly the events of 11 March 1938. In this respect, the main charge that of conspiracy is, I take it, that SEYSS-INQUART has induced the entry of the German troops by his telegram about alleged unrest. We come across this historical lie, which has brought the defendant the name of "Judas of Austria", in most

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relations of the Anschluss. We find it, for instance, in Raphael Lemkin's "Axis Rule in occupied Europe" (page 109). We find it again especially in the opening speech of the American Chief Prosecutor Jackson, although it is incontestably proved by the submittal of Goering's telephone conversations, 2949 PS, in relation with Goering's testimony that this telegram was never sent and was dictated, what is more, to a third party, at a time when the German troops had already received the order to cross the frontier. Consequently, these telphone conversations by Goering represent a historical document of the greatest importance. Rainer's Carinthian speech and his testimony as witness before the Tribunal also contradict the prosecution as regards Seyss-Inquart's contribution to the seizure of power! According to this document 4005 PS, it was Globotschnigg who made an abusive use of the Federal Chancellory's telephone to alarm the Federal States. Appointed Federal Chancellor by virtue of Schschnigg's withdrawal under duress, the defendant discusses the constitution of the cabinet, invites the ministers to assume their functions and takes the retiring government chief home in his own car. When it is further learned from the testimony of witnesses Stuckart and Glaise-Horstenau under what circumstances the law of annexation came into being, then it can indeed be said that Zernatto was right when he wrote that Austria was conquered: in his opinion, even against Seyss-Inquart and his government! (Ex. No. 63). Whoever, therefore, dispassionately surveys the whole set of events of March 1938 relatively to the Anschluss and examines particularly

the part played by the defendant, can only come to the conclusion that one cannot really speak of a carefully elaborated "Conspiracy", of the minutely concatenated perpetration of a crime. Where Austria is concerned, however, the Englishman Geyde is right when he says the curtain fell on the "Tragedy of Austria" with the invasion by the troops. It was to rise again soon on a new play: "The Martyrdom of Austria".

On 15 March 1938, Adolf Hitler came to Vienna. We have seen in this Court room the film record of his reception. With emotion, the defendant addressed him as follows: "What centuries of German History have striven for, for what untold millions of the best Germans have bled and died, the ultimate aim of ardent struggles, the ultimate solace of bitter hours has materialized today. The "Ostmark" is back with the homeland! The Reich has resuscitated, the German racial Empire (Volksdeutsche Reich) is established." With this, Seyss-Inquart had defined the political aim which was, and remained, the guiding star of his actions.

With the Fuehrer came Joseph Goebbels, who switched his gigantic propaganda machine into full swing. Rallies were held in close succession Festivals were celebrated. There was not a house in the whole country which was not beflagged. The [illegible] of the socialist workers said: "I vote yes" and the Bishops made exhortations for the accomplishment of a national duty: "Render unto God what belongs to God and unto the Emperor what belongs to the Emperor!" Both were to be mistaken. For with Goebbels came Himmler and his Gestapo and SS. Already, on the night of the 12 March, began a large

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arrest operation in Vienna. It included the members of the former military associations as well as prominent leaders of the socialist syndicates, Jews who were active in political or public life, Communists and Mornarchists, priests and Free-Masons and even the leaders of the Boy Scouts and of the Austrian Youth organisations. In Vienna alone, 76,000 arrests were made. On 2 April 1938, the first Dachau convoy already set out from the West Station with 165 leading officials including the present Federal Chancellor FIGL, Education Minister Hurde and Minister of Justice Dr. GERÖB. The second convoy followed on the 21 May, the third at the end of May and so it went on. Punctually every 8 days, convoys went off to Dachau, Buchenwald and Sachsenhausen. On 10 May 1946, the National Tribunal in Vienna sentenced to death Anton BRUNNER who caused 49,000 people, mostly Jews, to be sent to the extermination camps in Theresienstadt, Auschwitz, Minsk and Riga.

And what of the defendant? He was given the cold shoulder and relegated in a corner. The victor of the Saar electoral contest, Joseph BUERCKEL was instated as Reich Commissioner for the Reunion of Austria with the Reich and armed with dictatorial power. The powers of the defendant scarcely exceeded those of a higher president (Oberpraesident) in the Reich, i.e. those of an administrative authority on the intermediary level. Indeed, immediately above him was BUERCKEL who, under the pretext of the annexation interfered with everything and laid claim to everything, particularly as regards matters concerning the Churches and Youth, as is evidenced by Documents 67, 70, and 91. The defendant himself opposed BUERCKEL's methods. Indeed, he raised objections to HITLER himself against BUERCKEL's action in Graz on 8 April 1938.

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This we know also from the testimony of NEUBACHER, SCHIRACH and STRICKER and from the documents submitted by the defense. But BUERKEL whom CHURCHILL described as the "Governor of Vienna" in his book "Step by Step", remained the stronger and the embarrassing censor SEYSS INQUART was moved away to South Poland as a Provincial Commissioner. This treatment at the hands of his alledged fellow-conspirators shows only too clearly that SEYSS-INQUART was actuated by his enthusiasm for the Anschluss and cannot have been a conspirator! He was not a leader, he was led, or, what in my opinion is more accurate, perversely led. He was even perhaps a docile tool in the hands of the big two, HITLER and GOERING, but it was solely for his political ideal: the Anschluss, without any intention of a war of aggression.

Of course, there was something of an economic crisis in Austria after the Anschluss. It was partly a repercussion of the rearmament. But what took place was not the Anschluss as the Anschluss enthusiasts in Austria had visualized it, especially as the war provided a motive and a pretext to level down and repress every dissenting or critical opinion, to the most ruthless extent.

Austria did not cease to hope for her liberation and to fight for it. There was much distress and many died.- 6000 were executed in Austria. In the Vienna judicial district alone, 1200 men died by the guillotine, 800 of them just for their anti-Nazi opinion! In the last days of the war, Vienna's most beautiful edifices fell in ruins and St. Stephan's Cathedral, one of the most august monuments of German Gothic, went up in flames.

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So, the promise that HITLER had made on 15.March 38 was fulfilled:
" The pearl has the setting, which her beauty deserves."
The idea of union, that is to say the wish to bring about the national unification of a nation, was not a crime, criminal however was the introduction of a system that has presumably blocked its realisation for ever. The defendant certainly did not wish this.
To conclude my statements regarding the Austrian question I shall now briefly proceed from the point of view of the defendant SEYSS-INQUART, to examine the question as to what there is to say against my client from the legal respect.
For the clarification of his legal responsibility I will resume his behaviour in the following short review.
First in his political activity:
1.) After the agreement of 11 July 1936, the Federal Chancellor Dr. SCHUSCHNIGG took the defendant SEYSS-INQUART as a representative of the national opposition as collaborater, thus not as a political follower as for example the witness Guido SCHMIDT.
2.) SEYSS-INQUART has always declared - for the first time to Dr. DOLFUSS in July 1934 - that the national opposition consisted only of National-Socialists who obey solely HITLER's will, in any case will never act against HITLER's will.
3.) SEYSS-INQUART declared he was a National-Socialist

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he thus always represented the interests of the Austrian National-Socialists. This is not confirmed alone by the witness Skubl but referred to by the authorities previously quoted by me.

4.) To avoid any military or international conflict Seyss-Inquart pursued the following aim: Participation, for the Austrian National-Socialists independently of the Reich (N-S) Party, with closest collabaration between Austria and Germany.

5.) Seyss-Inquart declared that this aim could only be attained, if Hitler agreed to and directed the Austrian National Socialists expressly towards this policy.

6.) The culminating point was Seyss-Inquart's efforts during his interview with Hitler on 17.2.38. Although, so to say, Minister by the grace of Hitler, he represented his Austrian program.

Herein lies Seyss-Inquart's mistake. He thought Hitler and Berlin would establish a policy, i.e. as Bismark said exploit the art of possibility. Berlin, however, did not wish to establish a policy. In the face of this fact Seyss-Inquart's policy fell to pieces on 11.3. Is this mistake punishable, as, moreover, the Austrian State leaders desired an agreement on the same lines, and Dr. Schuschnigg knowing his program, kept him employed. In view of the defendants basic attitude until March 1938, details of his political tactical attitude are of secondary importance.

And now to the activity of the defendant as Minister of the Interior and as Security Minister.

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7.) There is no trace to be found of any National-Socialist influence on the Austrian Executive. The witness SKUBL confirmed this with unsurpassed clearness. SEYSS-INQUART forbade the police to take any political position, Doc. 51; he forbade National-Socialist demonstrations Doc. 59; he avoided such occasions, Doc. 59; he demanded legality of the Austrian Nazis Doc. 52.

8.) On 11 March 1938 SEYSS-INQUART fulfilled his duties as liaison officer in virtue of the Berchtesgaden agreement. With GLAISE-HORSTENAU he gave Dr. SCHUSCHNIGG in the forenoon of the 11 March a quite candid statement of the facts. He pointed out particularly threatening National-Socialist demonstrations, and the possibility of a German invasion. In the afternoon he delivered GOERING's demands to SCHUSCHNIGG and the latter's answers to GOERING.

9.) After Dr. SCHUSCHNIGG's offer to resign, SEYSS-INQUART retired. He complied in no way with GOERING's demand, to obtain the transfer of the Federal Chancellorship or to seize power. The ultimatums, with the threats of invasion by the Reich, were, as is known, transmitted by Embassy Counsellor v. STEIN and General v. MUFF to whose pressure President MIKLAS finally yielded. This appears from President MIKLAS' statements 3697 PS and from the witness RAINER and SCHMIDT.

10.) Only after Dr. SCHUSCHNIGG's farewell speech, did SEYSS-INQUART publicly demand the maintainance of order. He does not designate himself as a Provisional Government, but, in good faith, as Minister of the Interior and of Security, as was confirmed by witness SCHMIDT. He took the order not to make any resistance to the German troops, from Dr. SCHUSCHNIGG's farewell speech.

11.) Seyss-Inquart tried as long as possible to preserve Austria's independence and that by telephone conversations with Goering. Doc. 58; for the purpose that he requested Guido Schmidt to join his Ministry as Foreign Minister, as confirmed by witness Schmidt;

according to the statements of witness Skubl;

by refusing the demanded telegram Doc.58;

by the request to Hitler not to invade, as confirmed by Goering;

by the request to Hitler also to let Austrian troops march into the Reich:

12.) On 13.3.38 the Anschluss Law was proclaimed in conformity with Article III of the Austrian Constitution of 1.5.1934. The psychological situation of Seyss-Inquart was the same as that of all Austrians, who, on April 10th, had by secret ballots voted Yes for the Anschluss -- by 4,381,070 votes against some 15,000 No. -- Among other things Seyss-Inquart is reproached that:

Firstly he has used his various posts and his personal influence to promote the seizure , incorporation and control of Austria by Nazi conspirators.

Secondly that as an integral part of his evil intentions, within the meaning of the prosecution, he has taken part in the political plans and preparations of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements and assurances.

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To 1. Concerning the first named accusation, I refer to above summary and can limit myself to the following short statements: As a political aim, the annexation of Austria to the German Reich is nowhere punishable, and the defendant had no other aim. The Prosecution oversteps here - as also on other points - the limits of the Charter.

To 2. Concerning the second accusation that co-defendant SEYSS-INQUART has participated in a conspiracy against peace, this is to be gauged by Paragraph 6, Part 2 a of the Charter. It is said there, among other things, that planning in common, preparation or execution of war of aggression or war by the violation of international treaties, is punishable as a breach of peace.

I leave to the examination of the Tribunal if the case of the invasion of Austria really comes under the application of this provision in spite of the fact that there was no war. Much can be said in favor of the fact that the outbreak of a war is the proviso for culpablity for breach of the peace within meaning of the said provision.

In any case I cannot reconcile myself to an interpretation of this provision which goes so unreasonably far as even to consider an abandoned war plan or the possible planning of an eventually bloodless war as punishable as an accomplished crime.

It must be stressed upon with the greatest vigour that no proof has been produced therefore that my

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client has ever imagined that a war might arise between Austria and any other Power because of the Anschluss or as a result there of. On the contrary, his decision to occupy himself activily with politics, after the drama of 25 July 1934, was dictated by the effort not to let the Anschluss question be the cause of international complications. On that point he must have been far from imagining that HITLER and his entourage had viewed such a consequence as possible. The consequences of the Austrian enterprise proved him right. The German troops were greeted on their march into Austria with flowers and cheers.

Concerning the Great Powers, France and England protested on March 12th 1938 against the Anschluss. But this was only a very mild and platonic protest. A military support of SCHUSCHNIGG did not result; in the first place the League of Nations which was the guarantor Austrias independence, was not involved.

On March 14th 1938 the British Government declared in Parliament that it had discussed the new situation with its friends of the Geneva Entente and that the unonimous opinion had been that a debate in Geneva would lead to no satisfactory result.

When the League of Nations was informed of the Anschluss by the German Foreign Office it took note thereof without protest, and the Austrian representative at the League of Nations, Pfluegl, received his passport.

The Hague Arbitrative Court has struck its Austrian member, Professor VERDROSS of Vienna, from its register of judges.

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The diplomatic agencies were withdrawn or transformed into Consulates in the German Reich.

Only a very short time elapsed and already a few months after the occupation and annexation of this small country a State treaty concerning a second small State was concluded in Munich on September 29th,1938 with the alleged aggressor.

The French Prosecutor de MENTHON recalled in his indictment speech the memory of the great politician and statesman POLITIS. I also wish to call him to mind. Shortly before his untimely death he wrote in his book "La morale internationale" (International Ethics)(Editions de la Baconnière, Neuchâtel, Switzerland 1943) the following: "Qui menace les petites nations menace l'humanité toute entière!" (He who threatens the small nations threatens the whole of humanity).

The Powers of the League of Nations did not feel compelled to pay any attention to this sentence.

But there is another principle of international order which they did not see fit to apply against the annexation of Austria.

I mean thereby that principle which, under the name of the STIMSON doctrin has penetrated into the science of international law and diplomatic language. It is the principle according to which the nations of the world refuse to recognize forcibly obtained territorial acquisitions. This principle has at least penetrated into the legal consciousness of present times as deeply as the prohibition of wars of aggression, which is one of the main pillars upon which the Nuernberg trials rest.

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As evidence of this fact I will recall here the proposition of the Brazilian delegate Braga to the second session of the League of Nations, in which he proposed a "blocus juridique universel" (universal juridic blockade) against aggressor States and at the same time submitted as one of the measures to be adopted, the denial of the Right of annexation by aggressor nations. You will find this explanation printed in the document book submitted by Prof. JAHRREIS to the Court as complement to his legal arguments, and which is reproduced there as document No. 10 on page 35.

I will further recall the so-called Saavedra-Lamas Pact signed by several South-American States on October 10th,1933 in Rio de Janeiro and which the Little Entente and Italy also joined. Here the signatory States bound themselves not to recognize the validity of a forcible occupation or annexation of national territories. The Seventh Pan-American Conference accepted this principle on December 26th, 1933 with the participation of the United States of America. It agrees as to contents with a proposition already submitted previously by the Peruvian delegate CORNEJO on January 14th,1930 to the Council of the League of Nations.

It is above all contained in the famous Notes of the American Secretary of State STIMSON to China and Japan of January 27th,1932 which contains the following sentence:

"The American Government does not intend to recognize any situation, treaty or agreement brought about by means that are contrary to the statutes and obligations of August 27th,1928 in Paris".

And finally I recall to the memory of the Court the

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declaration of the Council of the League of Nations of February 16th, 1932, in which the Stimson doctrine, devoted into a principle, found the following expression: " No trespassing into the territorial integrity and no infringement of the political independence of a member of the League of Nations committed against Article 10 of the Charter of the League of Nations could be recognized as legally valid by the member nations."

Nevertheless all the nations of the world have recognized the incorporation of Austria into Germany without feeling compelled to concern themselves with the Stimson doctrine.

At the same time something essential can be said against the indictment for breach of the peace in violation of treaties. Germany is supposed to have violated three treaties. First the German - Austrian agreement of July 11th, 1932, secondly Article 88 of the Treaty of Saint-German, lastly Article 80 of the Treaty of Versailles. Here also it must be pointed out that all the nations concerned have not only put up with the violations of treaties, but moreover sanctioned them tacitly by their attitude. Herein lies at least a renunciation of international law, and the Powers concerned have thereby deprived themselves of any right to an ulterior reaction because of treaty violations, which would be in contradiction to any fairness.

In regard particularly to Article 88 of the Treaty of Saint-German, a violation of this provision cannot to begin with be charged against the German Government and therefore against SEYSS-INQUART as alleged co-conspirator, because Germany was not bound by this contract which she had not signed

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and which for her represented a "res inter alios acta."

On the other hand the German-Austrian Treaty of July 11th 1936 was a "res inter alios acta" for any other Power than Germany and Austria; here Austria alone could have raised the objection of breach of treaty. In this connection attention is called to the fact that the reconstituted Austria is not among the signatories of the London Agreement of August 8th 1945. Therefore the four founder States of the International Military Tribunal are not justified in vindicating Austrian interest at these trials.

In regard to Article 80 of the Treaty of Versailles, I resist to the temptation to discuss the question of the legal validity of this provision, in particular I will not raise the point of what significance the contradiction of this Article with the so called 14 points of President Wilson may have from a legal point of view.

But at the conclusion of this my legal explanatory statement of the Austrian affair I cannot suppress a thought of general import:

One of the great principles of international order which, in the course of the 19th and 20th centuries, fought itself through amidst much trouble, much confusion and many makeshifts and realized its aims more and more, is the <u>right of self-determination of</u> nations.

This basic principle of the right of self-determination of nations has anchored itself into the legal conceptions of international relations of our century to such a great extent, that one is forcibly led to include it among the general principles of international law, a thought that particularly appeals to democratic ways of thinking

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But as a general principle of international law it would then become the standard criterion of judgment, besides the Charter, the customary international law and thirdly the treaty rights, for the Nuernberg International Military Tribunal, which at any rate must find a similar basis for other questions. And further it would become, like all other generally accepted principles of law, of imperative character and have precedence in particular over international treaty laws.

A number of States have to thank this lofty expression of democratic thought for their existence. Such grace has been denied the Austrians after the First World War. Despite the fact that the people in Austria as well as in Germany unanimously strove for union, Austria was forced to eke out an existence as an artificial, unnatural State structure, able neither to live nor to die.

How bitter sound the words of the Encyclical "Ubi arcano" of December 23rd 1922: " We hoped for peace, but it did not bring salvation; we hoped for healing but terror came; we hoped for the hour of recovery, but only confusion came; we hoped for light, but only darkness came".

In the year 1938 also Austria and Germany strove for union, following in this the wish of the overwhelming majority of their citizens, and this time success came.

From the point of view of world history, the incorporation of Austria has no other significance than the successful integration of a mighty principle of international order, of the right of "self-

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determination of nations ". This dynamism carried away artificial and unnatural treaty stipulations.

Who can speak here of guilt ?.

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I have nothing to state on the question of Czechoslovakia and on the question of Poland very little. For during his short stay he was not in evidence at all to the Poles, but was mainly concerned with the organizational problems of the building up of the German administrative apparatus. In this matter it is sufficient for me to refer to the results of the handling of evidence.
Nor will I say anything more about his honorary rank in the SS than that an honorary rank never stood under HIMMLER's commanding und disciplinary power, nor itself possessed such power in the SS.
As regards his position as minister without portfolio, the importance of this function within the scope of the organizations will be discussed in the chapter " Reich Government" . Therefore, without going more deeply into this interlude, I hasten to the second scene of this legal matter - the Netherlands.

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THE NETHERLANDS.

Many know her only as the country of windmills, wooden shoes and wide breeches, with her red brick buildings, her large herds of cattle in green meadows and her immense varicolored tulip-fields. I know her as the country, that gave to mankind a REMBRANDT, the numerous masters of the Dutch School and de GROTIUS the great teacher of international law, that struggled for her liberty in gory fights against PHILIPP II of Spain and produced the great naval hero de RUYTER who won one of the most famous naval battles in history on 21 August 1673. However, in this trial here we learned that of all the occupied countries, the Netherlands offered the most united and toughest political as well as increasingly effective active resistance we also learned that throughout these years these people never abandoned the hope that the moment of liberty would surely return some day.

The motto of the province of Zealand: "Luctor et emergo", "I struggle and do not go under" had become the rallying word of the whole country!

SEYSS-INQUART came to this country in May 1940 as Supreme Chief of the civil administration. Whatever he may have thought and planned, it is his tragedy that he came as the representative of Adolf HITLER and of a system hated the world over. Hundreds of laws, orders and decrees repeatedly bore his signature and though they may have been ever so fully correct legally, in the eyes of the people they still remaine measures of the enemy and SEYSS-INQUART their oppressor. My client did not force himself into this office.

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He had rather requested permission to go to the front as a soldier. Adolf Hitler refused this. Seyss-Inquart also never contested his responsibility and gave himself up voluntarily after the collapse. In case the legal opinion of the defense concerning the superior command is not shared by the court, even in regard to paragraph 8 of the charter, the total organization of the Reich on the one hand and the attitude of the Dutch people on the other must be taken into consideration in passing judgment on his administrative activity. The way in which Seyss-Inquart on principle came to terms with himself on his conflicting tasks namely to represent the interests of the Reich on the one hand and yet to take care of the population within the meaning of the Hague Convention on the other, is revealed by his attitude in this respect as follows:

In the administration of Holland my client clearly allowed himself to be guided by the following legal conceptions:

The development of war technique particularly in air-warfare, the extraordinary extension of economic war, the expansion of the war into "total" and "indivisible war", the genesis of the conception of total blockade, partly made international law,-- as it was in effect in the years 1899 and 1907 at the genesis of the Hague Convention -- meaningless from the viewpoint of the clausula rebus sic stantibus, and partly because of new necessities and given conditions it proved to be absolutely incomplete and useless. Only a few remnants from olden times were still valid in the second world war.

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The severity of this change is revealed particularly in respect to bombings of residential quarters made possible by the colossal development of explosives and the technique of flying and which found no justification whatever according to previous law, if they can be justified at all, it is possible only out of a concept of total war.

However, this development particularly drew the individual person into the war as an object, but last not least under the influence of the Anglo-American concept of war.

Accordingly, enemy civilian population as well as the recources of the occupied regions during this development have become the war potential of the occupying force within the limits imposed by humanity.

A further limit is constituted by the general provision of International Law that requisitioning these forces must be necessary for the purposes of war and thirdly this requisitioning must ex aequo et bono be reasonable.

Moreover, the totalitarian and indivisible nature of modern warfare forbids treatment of individual areas separately. It will no longer do to requisition the personal and economic forces of a definite area only for its necessities, as it is still prescribed by the Hague Convention for Land Warfare. Henceforth these forces must be at the disposal of the whole sphere of action of a belligerent country as one unit, on the other hand they benefit from belonging to the whole.

Modern technical development, especially in the field of communications and traffic

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moreover causes the attitude towards another problem of warfare, namely the so-called Partisans to be faced by new and most grave tasks.

In contrast to the period of the first World War, the Partisan organization definitely assumed inconceivable proportions in the second World War and developed into an enormous danger for the fighting troops which at most can be compared with the Guerilla war of attrition against Napoleon I in Spain. The old international law by no means made sufficient provisions to parry this danger.

As a matter of fact the prevailing principle when fighting the Partisans must be the security of the fighting troops at any price.

This means for the army as well as for the occupation administration both the right and the duty to take the severest suppressive and preventive measures within the limits of reasonable expectation and humanity. My client discharged the duties of his office in accordance with these guiding principles with the fixed notion that he was thereby complying with his duty according to the directives of the legal subject of international law, i.e. of the supreme Reich Leadership. Any thou ht of acting illegally or even of committing punishable acts was far from his mind.

That has nothing to do with the applicability in this case of the principle that ignorance of the law excuses no one for here no national penal law is concerned but international law and it is not a question

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on the other hand of a legal error but of a subjective conception of duty, which may have gone astray here and there, but was always credulous!

Now, in investigating in detail the individual administrative acts of the defendant in accordance with this basic exposition, it must be pointed out that the National Socialist administration, as everywhere in occupied territories but particularly in Germany proper revealed an ever greater and more penetrating superorganization and at the same time an extremely tight centralization in Berlin. Consequently there were the following authorities in the Netherlands:

1.) The Reich Commissariat
(Civil Administration and Protection of Reich Interests).

2.) The Supreme Commander of the Wehrmacht and the various Commanders-in-Chief including their own Courts.

3.) The Police, concerning which I shall speak later.

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4.) Four Year Plan GOERING

5.) Special Purpose Staff ROSENBERG

6.) General Labor Commitment SAUCKEL

7.) Armament Ministry SPEER and

8.) last but not least, the NSDAP with its offices and organizations.

Pursuant to the Fuehrer order, thus de jure, the Reich Commissioner was bound to obey absolutely the instructions of these central agencies, and he was not permitted to intervene in their measures. The record of history to be written will perhaps throw light on the question as to how great was the skill of the defendant to prevent some of them or at least how he toned them down. As regards the Dutch population, its attitude, as already mentioned, was completely hostile and the forces of the resistance movement, organized, equipped and directed through the Dutch Government in London, grew from one year to another. The defendant's actions should be considered against this background, to reach a fair judgment.

I am now turning to the indictment and in outline I shall follow the schedule of the French prosecutor.

Sovereignty. The first charge is the alleged violation of sovereignty of the country through introduction of the Reich commissiariat with its 4 general commissiariats; annulment of civic liberties; introduction of the leadership principle, and dissolution of legislative bodies and political parties. These measures cannot constitute a breach of International Law. Inasmuch as Germany, which is likewise one of the signatory powers of the IVth Hague convention

of 1907, based itself on the laws governing land warfare, and notwithstanding the lack of the all-embracing participation clause after entry into the war by the Soviet Union, the validity of the laws governing land-warfare-with due consideration for restrictions referred to in the beginning of the above statements-must be accepted for the Netherlands as well. Its fundamental elements do not seem broken. As a result of the complete occupation of the country, the flight of the Queen and of the Ministers from the country, the highest governing power in civil affairs passed from the Crown and the Parliament to the occupying power, and with it to the Reich Commissioner. Through the unconditional capitulation of 10 May 1940, General WINKELMAN, vested with special powers and left behind in the country, renounced his authority in every respect. Furthermore, it is the accepted rule for the occupying power to regulate the administration as it is demanded by its requirements, - under exclusion of the right to take any step apt to deprive the country in advance of the final clarification of its fate. A specific recognition to that effect through the Highest Court of Holland took place according to the decision of 13 January 1942 submitted to me. The division of authority between the Reich Commissioner and the Commander of the Wehrmacht, as provided by the Fuehrer decree, is a matter pertaining to the internal segregation of jurisdiction applying to the occupying power. This has been specifically recognized by the British Manual of Military law (CH XIV Amendment 13 of 1936). The fact that the State Parliament was suspended, the activity of the State Council restricted to preparation of opinions in disputes on administrative matters and that, finally, parliamentary parties were dissolved, is likewise no violation of International Law because during the period of occupation the occupying power itself decides how far the need for legislative

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measures and for amendment of the legislation of the country exists. As a rule, about 50 parties, entered the contest for the 150 seats in the Dutch Parliament, at every election. Due to the fact that the contesting parties not only were in accord in their antagonism toward the occupying power, but frequently were active in the various resistance movements, their suspension and subsequent dissolution - which was only decreed on 5 July 1941 - was the good right of the occupying power, all the more so as the country was on the direct path which the coming developments of the war were bound to follow and since an invasion was very likely. This made a rigid concentration in the administrative apparatus, under exclusion of all parliamentary obstructions and the potentialities which they held for enemy propaganda, imperative. If it is pointed out that this, on the other hand, encouraged the NSB, it might be answered in brief that the Reich Commissioner consistently refused the formation of a government by this party. The fact that parties which were already in existence in the country or were to be newly formed the ideology of which was friendly to the occupying power, were encouraged by the latter, is also not outlawed by International law. Inasmuch as no official administrative powers were vested in the NSB and since political organizations had no influence on the administration it is also immaterial that in the year 1943 this party announced itself as the representative of the political will of the Dutch Nation. It always has been and still continues to be the practice up to this day that occupying powers encourage and assist political parties friendly to them. The charge of Communization is unjustified.

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By reason of its descent, the Dutch people always was considered to be Germanic and it is therefore not feasible to make Germans of them. A perusal of Dutch history shows us that for centuries the Dutch people always belonged to the Federation of the German Reich, and he who roves through the country can still see in Groningen's coat-of-arms the German Reich Eagle, as well as Amsterdam's coat of arms carrying the emblem of the German imperial crown since 1489. The first and the last Salic Emperors, Konrad II and Heinrich V, died in Utrecht. It is but natural that in view of the blockade against the sea and the colonies, the occupying powers desired to direct the country towards Central Europe and it never was intended, certainly not by the Reich Commissioner, to cut out the national traits and the independence of the Dutch. It was perfectly justified for the defendant to declare in his speech of 9 November 1943, in Utrecht, (document book 102), among other things: "We ourselves would cease to be Europeans should we fail in our mission to maintain and to promote this rich luxuriance of characteristic and blood-bound cultures of the European people."

Equally unjustified is the charge of the French Prosecution in regard to pressure in the interest of Holland's entry into the war. There did not exist a ban against enlisting volunteers of Dutch nationality in the German Wehrmacht. Article 45 of the law on landwarfare merely forbids compulsory recruiting for war activity against the own fatherland. This did not make obsolete the decress of the Dutch criminal law (referred to by the Prosecution) applicable to the person who takes up arms voluntarily, a decree which was strengthened during the war by Royal edict.

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The same holds true as regards regulations on citizenship for these volunteers and marriage to German nationals. Inasmuch as these orders of the Reich Commissioner could have legal value only within the limits of the German Reich, the interpretation of law that they do not constitute abuse of sovereignty in the sense applied by the Prosecution can be maintained in good Conscience. That a press had to be silenced which notoriously placed itself in opposition to the occupying powers goes without saying.

The French Prosecution points to another suppression of sovereignty through removal of intellectual life as a result of the closing of universities and the demand for a declaration of loyalty remains within the framework of the convention governing Land Warfare. Article 45 prohibits compulsion of the inhabitants of an occupied country to take an oath of allegiance. According to the wording of the declaration it is merely demanded to abstain from any action directed against the German Reich or its army. Inasmuch however, as the population of the occupied country is bound to obey the occupying power governing the State, this statement, which does not make an active demand, cannot be considered a violation of international law.

The organization of government was taken over almost entirely

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and maintained, despite an attitude of pronounced rejection, even animosity; especially one refrained from interference in the field of the judiciary. The only reproach in this direction is the dismissal of the President of the Court of Justice at Leeuvarden. The defendant expressly declared to assume responsibility for this case, and he has the perfect right to do so. The occupying power can interfere in the field of the judiciary only when the purpose of the occupation is in jeopardy. If a judge refuses administration of justice - even though the cause for his complaint was eliminated as was the case in this instance - then the occupying power has the right to remove from office the judge concerned.

Acts of Terror. The French Prosecution then continues, asserting that the defendant initiated a series of acts of terror. In the course of the presentation of evidence on this point, we have heard what collective punishment was about. Kammergerichtsrat Rudolf FRITSCH and President JOPPICH, further proved by their testimony that the defendant was extremely conscientious in the application of the right to grant pardon and that he restricted the infliction of capital punishment as much as possible; and as regards Police summary courts, the defendant and the witness WIMMER have proved that this was a procedure applied in a few single cases only, - headed by an official of the judiciary - the respective defendant having the right to use the services of a defense counsel freely appointed, of Dutch nationality and that, furthermore, this procedure found application for two weeks only. Even at this time we still find in a considerably more severe form some such special type procedures for emergency purposes used by powers of occupation. The elimination of regular courts and

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One of the main-points of the Prosecution is the question of hostages, which I must therefore discuss in detail. Dr. NELTE has already discussed its juridical aspect in general, and I refer to his statements. In RF 879 the prosecution has now chosen two particular cases. The so-called hostage-shooting at Rotterdam and the one after the attempt against the senior Leader of the SS and of the Police. Already in the course of his first interrogation by the plaintiff, the defendant referred to the first case of the Wehrmacht's demand for 25 to 50 hostages. The witness WIMMER confirmed that these hostages had been demanded by the Wehrmacht, that through the defendant's influence this number was finally reduced to 5, and that the Senior SS and Police Leader was entrusted with the shooting.

The relation between the Wehrmacht and the Reichcommissioner, as well as the relation between the Wehrmacht and the Police, is regulated by the decree dated 18 May 1940 Reich Law Gazette No. 1, page 778, 1376 PS in paragraphs 2 - 3.

In order to convict the defendant, the Prosecution submitted the accusation but not the testimony of General CHRISTIANSEN. In the course of an interrogation the defendant did not take the oath.

The record proves that:

a) The order was issued by the Wehrmacht on account of grave cases of sabotage and was analogous with the so-called "Law governing hostages" in Belgium and France.

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b) The arrest of the hostages was then carried out by the German Police on the order of the Commander of the Wehrmacht in Holland. "An order is an order."

c) The German High Command or Command West persists in the execution of the orders notwithstanding all representations.

d) Execution by the Police.

e) Proclamation I made in the Juridical Department of the Headquarter of the Wehrmacht in Holland.

Proclamation II drafted by the Senior SS and Police Officers.

Would the Tribunal consider the justification of the defendant as standing the test, in the event of his using the arguments of General CHRISTIANSEN for his justification ?

As to the second so-called hostage case, it is dealing with the consequences of all attempt directed in March 1945 against the senior SS and Police leader SS Obergruppenfuehrer RAUTER, the highest Police officer in Holland, who was directly subordinated to HIMMLER. Remembering the consequences of the murder of the tyrant HEYDRICH by the Czech Patriots in 1942, we can well imagine HIMMLER in 1945, at the hight of his power, avenging the plot against one of his nearest and most important lieutenants. It is likewise understandable that the defendant as head of the administration, ordered deterrent measures to be taken in the sense of general prevention after an attack had been made on one of his general Commissioners. He, knowever, did not demand any hostages but only the consummation of juridically closed criminal cases No. RF 879 proves the truth of these assertions of the witnesses SCHOENGARTH, LAGOS, KOLITZ and GERBIG, that only men sentenced to death and not 200, but 117 were shot, partly possibly before the originally fixed date of execution.

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This also is confirmed by the Criminal Commissioner MUNT in D II of the report of the Dutch Government, and likewise Dr. Friedrich WIMMER, who was interrogated by the Court. In this case it is not at all the question of hostages in the original sense, but the justified execution of saboteur pilferers etc. from the viewpoint of the occupation which was called the shooting of hostages in order to terrify the population. The fact that the defendant achieved the cutting down of the number of 500 real hostages originally demanded by HIMMLER, to 117 orders of execution, can certainly not be a reason for calling him responsible for HIMMLER's cruelties! The prosecution furthermore asserts that the defendant, in his capacity as Commissioner of the Reich, had agreed in, directed and supported the transfer of an enormous number of Dutchmen to Germany. The principal question of the employment of foreign workers has already been widely discussed by other defense counsels. May I be allowed to add a few remarks to this count of indictment. According to my information received from the statistical Department, 300 - 500,000 men out of a population of 9 millions were out of work, a chronic situation in the economic life of the Netherlands, which were more or less rightfully considered one of the richest countries of Europe. At the time of the Reich Commissioner taking over governmental power he considered it his duty to deal with unemployment in the interests of order and peace.

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It was evident that this could not be achieved according to liberal principles, the more so that even in countries adhering to the liberal economic order, the demands of the war period were directed unilaterally, as necessitated by war-conditions. Until 1943 the labor commitment was effected according to the voluntary principle. The defendant himself explained that a certain compulsion was used. He had found great understanding in Minister SPEER in particular for his plan, of enabling the workers to be used in their home country by transferring German undertakings from the Reich to Holland. In 1943 3 classes of young unmarried men were called up by Labor offices but not by compulsion. As certified by LAMMERS, the Reich commissioner refused in 1944 the commitment of 250 000 workers who had been requested by the Reich. The "Man hunting project" of the autumn of 1944, i.e. the mobilising of the entire able bodied population was, as contested by the witnesses HIRSCHFELD, SCHWEBEL and WIMMER, a drive by the Wehrmacht, for which the defendant cannot be considered responsible. On the contrary, the fact must be expressly insisted upon that the Reich commissioner diminished the hardship of these measures by the issue of 1,000,000 postponement certificates, and by urging a regulated transportation possibility as well as the mobilisation of workers initiated by him, whereby it should not be overlooked that the steady growth of the opposition movement rightly caused uneasiness to the Wehrmacht, considering the grave danger for the occupation forces by the accumulation of people in the South Western Provinces.

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To summarise, it must be juridically noted, that the defendant was subject to the orders of the central administration within the framework of the Four Year Plan, that but for such orders and demands he would never have sent workers to the Reich, and that he strongly opposed it as far as its execution was not in conformity with the laws of humanity.

As to the next point of the prosecution, the so-called economic looting of the country, it has likewise to be referred to the first basic interpretations. The confiscation of raw materials was carried out in the first day of the occupation within the framework of the Four Year Plan, with the collaboration of the Dutch authorities, who thus had the opportunity of diminishing unnecessary hardship. It is evident that the defendant would have preferred to keep the stocks within the compass of his own administration. The defendant insisted in every single case of requisition on proper compensation basis, and prevented the transfer of institutions, as for instance the Margarine factory UTRECHT or the LEYDEN Iec. works. As, under pressure of the Reich Commissioner, G ERING promised that the Dutch people should not be treated worse than German citizens, it would appear that according to a not too narrow interpretation, Article 53 of the Hague Convention of Rules of Land Warfare had therefore in this point been carried out by the defendant.

The reports of the Field Economy Officer with the Wehrmacht Commander in Holland, dated 9 October 1944 (RF 132) and of Lieutenant HAUPT (3[illegible]2 PS, 196 USA) prove that the confiscations were in the first instance the work of the Wehrmacht.

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This latter shows that the difficulty of this whole position arises particularly from the fact that Reich Commissioner SEYSS-INQUART is still here, notwithstanding that he has almost resigned. This merely shows that the defendant always diminished or opposed any cases of hardship in this sphere to the best of his ability. The removal of stocks of raw material and rolling stock in the course of a total war after the invasion and in view of the approaching enemy, is equally justified within the framework of International law.

The emergency situation created by the war called for the re-establishment of Dutch economy in Europe. Before the war, according to official statistics, 39% of the gainfully employed population were engaged in trade and industry, 23% in commerce and traffic and 20% in agriculture. By being cut off from the rest of the world, the shipping industry was completely shut down and merely as an example it may be stated that 60% of the trade passing through Rotterdam-harbour consisted of German goods. The highly developed agriculture was a pronounced luxury cultivation, and dependent on artificial fertilisers from South America and concentrated fodder from Canada. We have learnt from the testimony of Dr. HIRSCHFELD, how relatively well Dutch agriculture and particulary the world famous cattle breeding have survived the war. This was only possible through understanding collaboration of the Reich Commissioner and the local administration offices, and through their support by the defendant.

The alignment of economy in respect to the great space (Gross-raum) of Europe, which during the war was almost exclusively governed by Germany and her allies,

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offered without a doubt great possiblities of disposal for Nethorlands trade and industry. It was therefore natural that also in a financial respect an assimilation of the economy to conditions in the German Reich or respectively to the European economic area had to take place. A regulation of the financial economy was already necessary in view of the price policy. It would exceed the limits of these trials to state more details here. May it only be pointed out to the prosecution, that the defendant did not have any influence on the amount of the occupation costs, and did not even have any possiblity of examining them; only the civilian budget was settled by the Reich Commissioner with the consent of the Reich and under the supervision of the Reich Treasury (Reichrechnungshof). In agreement with the Dutch agencies civilian requirements were set at 3 million Guilders per month, which was not exceeded, on the contrary, at the end of 1943, a saving of 60 million Guilder resulted which remained in the Nethorlands. The lifting of the customs borders in inter- state traffic was justified by the uniform price policy and could only have an effect favorable to the Nethorlands. The relationship between Marks and Guilders was also determinad by mutual agreement. A difference took place for the first time when the blocking of foreign exchange was rescinded. Here the views of the previous Dutch Chief, General Secretary Trip and those of the General Commandant Fischbeck differed. The defendant, who after all was not a finance man, submitted this important question to the central Reich authorities for their decision, and the defendant Goering has expressively stated during the presentation of evidence that he decided in favor

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of Dr. Fischboeck's opinion against the opinion of Reich Minister for Economy Funk. The defendant therefore cannot be charged with any criminal responsibility, not even that of a culpa in eligendo, if in the place of General Secretary Trip, who had resigned, he now appointed Rost van Toningen, who as former Commissioner of the League of Nations surely was an excellent finance expert. The defendant Funk has also testified here that he has always considered the Clearing-debts as true debts. In the Netherlands government report it is pointed out, that the financial demands of the Reich reached approximately the same total in all occupied western territories and that only the methods differed. The method employed in the Netherlands would have brought the result if the conclusion of the war had been successful to Germany, that the Netherlands would have had a real demand in the amount of 41/2 Billion Guilders against the Reich. The whole question therefore does not belong into a criminal trial but into the peace negotiations. Furthermore, exact books were kept about everything, and so may it only be noted, that the conductors of the Netherlands Tramway Associations always marked down nicely and properly when a member of the Wehrmacht used the tramway with a free ticket.

As far as the alleged looting of museums and libraries is concerned, aswell as the looting of the royal property, it must be referred, for brevity's sake, to the results of the presentation of evidence which proved beyond doubt, that the defendant particularly attempted to safeguard the world famous public art treasures and that he reduced arbitrary acts of the Reich Offices, if such occurred, to a minimum.

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As far as the seizure of objects not essential for the conduct of war, as for instance, art treasures, libraries etc., is concerned, the defendant did not participate in it. He acquired the few pictures which he bought for Vienna, on the open market. With respect to the royal property he issued such instructions that this confiscation of property remained only a demonstration. This is also evident from the Dutch governmental report. The repeatedly mentioned library Rosentaliana did not reach the Reich, as the defendant stopped the transport which had been carried out against his will, at Groningen . The case Arnheim seems likewise cleared up by the witnesses Dr. HIRSCHFELD and WIMMER and the report of the field economic detachment - Doc. 81.

The Jewish question has also a certain connection with the economic problems. Before I deal with this main subject, I must absolutely talk about the position of the police in the Netherlands. The prosecution wants to prove that the police and namely also the German police, particularly the Security police was subordinated to the defendant. Contrary to this attempt is the fact that in all the signatory powers, with the exception of the Soviets, the police is actually a part of the civil, particularly the domestic administration. The situation in Germany was like this: " de facto" and not " de jure " , HIMMLER was independent, even more powerful than any other Minister, although he was nominially State Secretary of the Interior. Disciplined and centrally directed the SS was subordinate to him in his capacity as Reichsfuehrer. The defendant KEITEL testified on 5 April 1946, that since the outbreak of war the SS became more and more an independent power factor in the Reich.

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He and his assistants had not been informed of HIMMLER's full powers, and HIMMLER and HEYDRICH had usurped the jurisdiction over life and death in the occupied countries through the frequently mentioned Fuehrer order.

What was the situation now in the Netherlands?

1.) The Fuehrer decree of 18 May 194[illegible] already reveals that the German Police was not part of the Reich Commissioner's organization nor was it subordinated to it. For it says in the decree: "The German Police is at the Reich Commissioner's disposal", which would not be necessary, if it were part of the Reich Commissioner's office.

Thus even if the Reich Commissioner is the supreme governmental power in the civil s here, the police is not included in it!

2.) The Reich Commissioner publicized the administrative agencies in decree No. 4 and that in such a way that the Dutch could clearly see what concerned them, without being affected by the differences of the Reich authorities. As regards the Police, i.e. the German and Dutch Police, a second General Commissioner as such is appointed for Security affairs, (Senior SS and Police fficer). According to article 5 of this decree the Senior SS and Police fficer (HSSUPF) has under his command.

a) the German Police and the Waffen SS (this statement is declaratory for the Dutch, for the Senior SS and Police fficer was appointed by the Fuehrer on HIMMLER's recommendation without the Reich Commissioner being consulted.) Rauter presented himself to Reich Commissioner as being already appointed, and in the opinion of the prosecution as well, the Reich Commissioner would never have been albe to appoint the Commander of the Waffen SS.

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b) The Dutch police (this fact is essential, since for the Dutch police the Reich Commissioner was competent).

The Dutch witness, Dr. HIRSCHFELD who was general secretary throughout the period of occupation, expressly confirmed that RAUTER was directly subordinate to HIMMLER and that the apparent unity of the police and administration according to the decree did not exist in reality.

On page 21 of his book "Axis rule in occupied Europe", Raphael LEMKIN defines the task of the police as being the liquidation of politically undesirable persons and Jews, just as the main responsibility for the seizure and deportation of labor for labor commitment in occupied countries was charged to the police.

From what has been said it is shown that the Reich Commissioner has to assume only a limited responsibility for the German police, that is to say in so far he exerted it for the carrying out of his orders in civilian matters. When the Reich Commissioner called upon their help, the police customarily got first in touch with HIMMLER about the matter in most cases. But in all matters which fell within the competence of the police, the Reich Commissioner could neither issue orders to them nor intervene "de jure" in their activity. This must absolutely be kept in mind when judging the Jewish question, the concentration camps, and the deportations.

The admissibility of special courts and police protective

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custody is even recognized in the Dutch governmental report. The arrests and management of concentration and prisoner camps was the affair of the police. As explained in detail by the defendant when examined as witness, he went, as WIMMER and SCHWEBEL also confirmed, to great trouble to put an end to abuses in the camps which became known to him. We shall here only briefly refer to the treatment of the so-called Dutch-Indian reprisal hostages with whom the defendant concerned himself considerably and finally the fact that he succeeded in having the members of the clergy who had been imprisoned in the Reich enabled to return to the Netherlands.

After having thus briefly sketched the position of the police and their tremendous power I shall go over to one of the main points of the indictment, i.e. the Jewish question.

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In the trial brief it is stated by the prosecution that Reich Commissioner SEYSS-INQUART alone is fully responsible for the execution of the Nazi program for the persecution of the Jews in Holland. That in his Amsterdam speech before the members of the NSDAP, on 13 March 1941, he himself had declared:, "For us the Jews are not Dutchmen; for National Socialism and for the National Socialist Reich the Jews are the enemy." In that speech SEYSS-INQUART also explains why, as defender of the interests of the Reich, he believed he had to adopt that attitude against the Jews. He saw in them those whose influence on the German people would paralyze its will to resist and who would appear everywhere as the enemies of the German people. But from that very speech it can be established that SEYSS-INQUART considered all measures against the Jews as safety measures for the duration of the war. He speaks of his desire to create endurable measures during the period of transition and that after termination of the occupation it would be up to the Dutch people to decide what the fate of the Jews was to be. It was quite natural and obvious that during the past war, as a result of the treatment they experienced in Germany and later in the occupied territories, the Jews, without distinction as to nationality, belonged among the most bitter enemies of National Socialist Germany. That had to be taken into account

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by every official who had to look after the interests of the Reich in occupied territories. This also makes the speech referred to in the beginning understandable. Therefore, when SEYSS-INQUART was commissioned by decree of the Fuehrer to preserve the interests of the Reich in Holland, he also had to adopt some kind of an attitude toward the Jewish question. It was his intention to remove the Jews from leading positions in the government and industry for the duration of the occupation, but otherwise to refrain from any further measures against them. Actually, he also instituted only such measures, whereby the Jews were sent on leave or were retired. In the meantime, the exclusive handling of the Jewish question, with full powers and for the entire sphere of German interests, had been transferred by Adolf HITLER to HIMMLER, that is, HEYDRICH, exclusively. Now, the Security Police, not satisfied with the dilatory handling of the Jewish problem by the Reich Commissioner, invoked their plenary powers and established an office in Amsterdam whose interference was the cause of constant frictions with the deputy of the Reich Commissioner in Amsterdam. The Security Police claimed they were unable to guarantee the safety of the Reich, the task entrusted to them, unless further measures were taken restricting the Jews in matters pertaining to economics and to their personal liberties. English and French people had been gathered in individual camps and had been driven over the border into the Reich, after their property had been confiscated, as enemy property a treatment which Germans living abroad had likewise experienced in enemy countries. In particular, the Police pointed

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to the fact that very many Jews were actually involved, and often took leading parts, in all the more serious attempts at sabotage and other forms of resistance. Likewise, the Dutch Jews, whose ancestors had in part come from proud Spain, the greatest portion having come from Germany and the East as emigrants, had already been active in leading positions before the occupation in opposition to National Socialism in industry, but more especially in the press. When the enemy entered the country, they knew it would be a life - and - death battle and, contrary to Shylock's words in The Merchant of Venice: "For enduring is the heritage of my tribe " they not only placed their property at the disposal of the resistance movement by also their lives. The Reich Commissioner also could not fail to pay heed to this fact. Because of the great number of persons involved a treatment of the Jews roughly similar to that of the English and the French or other enemy aliens by confinement in a camp was simply not possible. Measures affecting personal liberty of action were taken by the HSSUPF as HIMMLER's direct subordinate, or by the Security Police on direct order by HEYDRICH. At this point also belongs the introduction of the Jewish star, which the Dutch, by the way, did not consider a mark of defamation. At the same time that measures affecting the personal freedom of action were taken, the property of Jewish organizations and Jews was also taken under management. The Reich Commissioner appointed Dr. BOEMKER as his special deputy, with the task of supervising the measures taken by the Police - insofar as this was possible administratively - and to prevent excesses.

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As a matter of fact , he intervened a number of times and was able to prevent bad police measures. The activity of the Reich Commissioner's Office was largely concerned with economic measures, and the description by the Dutch Government Commissioner for repatriation , USA 195, gives a clear illustration of the entire Jewish problem in Holland . The table shows that the Reich Commissioner was able to delay measures against the Jews for almost a year and that really intensive measures did not begin until February 1941 with the formation of the Central Office for Jewish Emigration which was ordered by HEYDRICH and under the supervision of SS Obersturmfuehrer (SS first lieutenant) de Funte. A comparison with measures taken against the Jews in Germany itself and in other occupied territories shows a pronounced uniformity, which likewise indicated that the measures in question were not taken by the Reich Commissioner but were measures taken uniformly by national offices, in other words, by the Police. The Reich Commissioner also saw to it that sequestration of Jewish property moved in orderly channels. When it finally came to the liquidation of property, via orders from the Berlin Central Offices, liquidation proceeds were not confiscated but credited to the Jewish property custodian so that,finally, the Jewish administrative office had accumulated some 500 million guilders. In order to put an end to the constant pressure and interference of the Police through HEYDRICH, the Reich Commissioner together with HSSUPF (senior SS and Police Officer) tried to stabilize the Dutch Jewish question by assembling in 2 sections of the city of Amsterdam,and in 2 camps, the Jews affected by the restriction ordinances where they

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were to live under their own administration. One of the camps was Westerborg where they had a Jewish camp police of their own; with regard to the outside the camp was under the supervision of the Dutch Police. When, in the Spring of 1945, it was occupied by the Canadians, the English Radio reported that they found the Jews housed there in good condition, contrary to other camps which were found outside of Holland. The second confinement camp was to be Vugth. HIMMLER made a concentration camp out of it. The Jewish community of Amsterdam was under the direction of ASCHER, a merchant dealing in precious stones. Funds were made available to the Jewish community, especially for school purposes; negotiations were carried out with firms to provide work in the Jewish quarters. In the beginning of 1942 HEYDRICH that is, HIMMLER demanded trasfer of the Dutch Jews into assembly camps situated in Germany. Both invoked the plenary powers given them by the Fuehrer and pointed to the fact that sooner or later an invasion had to be expected; Holland seemed a suitable territory because the ports of Rotterdam and Amsterdam provided suitable bases for reinforcements and that from here was the shortest route that the British could take into the Ruhr region, the industrial centre of Germany. To permit so many people, extremely hostile to Germany, to remain in a territory which would see future operations in the battle against England was inconsistent with the safety of the Reich. The Police persisted in its stand and the Reich Commissioner was able to intervene only by taking steps to make the evacuation by the Police more humane. The Reich Commissioner was able to bring about that thousands of Jews were exempted from evacuation

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and were so able to remain in Holland. The defendant had the internment cam, inspected by his agencies and in particular corrected bad conditions trough the intervention of the Christian church, insofar as this was within his power. The order for evacuation was not given by the defendant but by HIMMLER or HEYDRICH, the defendant did not even give his consent to the evacuation. As a result of steps taken by the defendant, a part of the Jews was taken to Theresienstadt, considered a place of encampment, ostensibly under the supervision of international agencies, such as the Red Cross and where the Jews were said to be well treated. As a result of exemption regulations brought about by the Reich Commissioner, a great many Jews could be exempted from evacuation. The above-mentioned Dr. BOLMKER was charged with supervision of the transport of Jews in Holland and it became possible to correct abuses repeatedly through HSSUPF. The greater part of the Jews was taken to Poland and it is probably one of the most terrible sentences, found in USA 195, one of the documents submitted by the prosecution, which reads: Total number of those deported 117,000. After they had left Holland every trace of them was lost; they merged into a mass of deportees coming from all occupied countries and no longer could be identified as an individual group." -- Now comes the cardinal point of the entire indictment, the dramatic clima in the trial against this defendant. Did the defendant know of the destiny of these many unfortunate and innocent people; did he intentionally approve it or does he become guilty because he did not prevent it?

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The defendant has again and again, even when questioned as witness under oath, solemnly declared that he did not know anything about this, and that he was of the opinion that the Jews would, actually be resettled in the East for the duration of the war. When the defendant once had the opportunity in the year of 1942 or 1943, on the occasion of a report to talk to Adolf HITLER himself, he turned the discussion to the Jewish question. When the Reich Commissioner pointed out that the evacuation of the Jews was causing serious unrests in the Netherlands, Adolf HITLER replied that he had to segregate the Jews as destructive elements from the body of the German people, and that he wanted to resettle them in the East. When HIMMLER, the Chief of the SS and of the German Police, was questioned by the defendant in the beginning of 1944, he replied to the apprehensions of the Reich Commissioner with the words, that he should not be worried about his Jews, his Dutch Jews were his best workers. The representatives of the government sent into some camps returned with the reports, that the Jews were doing well and that they were satisfied. News from the deportees also, arrived in the Netherlands it regular intervals , although they decreased later on. Today, when the heavy certain which was spread over the horror of these mass murders has been lifted we know the connections and the truth. Especially by the conscientious researches in these trials, it has been established that HITLER and HIMMLER have understood in a practically fiendish way to obsure and to cover the knowledge of their criminal intentions concerning the final solution of the Jewish question. When I read the Dutch report about the Jewish question for the first time, I myself was deeply moved. It is this document and the so-called

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HOSSBACH last will of HITLER (Hossbach'sche Hitlertestament) from the year of 1937 which I have especially submitted to my client. Dr. SEYSS-INQUART told me about the HOSSBACH document, in which the evacuation of 1 million Austrians was demanded:" that he has never seen this document and never heard about it, either. If I had known such an intention, I would never have participated!"

When I further presented to him the document concerning the Jews, he stated in a convincing way not to have known anything about the final solution and the happenings in the extermination camps! When I then expressed my opinion, why he did not quit, after he could not prevail with his views upon HIMMLER and his accomplices especially concerning the Jewish question, he told me that,after all,he was a soldier and knew that a soldier must not desert in war time. He had come to the conviction that he, besides the other tasks charged to him, also remained on his post for the reason, that something better would hardly have followed for the Netherlands! In my duty as defense counsel and jurist, I can add the following: one could not count on the extent of extermination which the prosecution mentions. If it has taken place in the stated extent, these are actions of a special group of HIMMLER's hangmen which correspond to a desperate situation only. But in penal law, the principle applies that the causal chain is interrupted, if an independant criminal act is interposed in the latter. This is the case here. Before I conclude the most difficult chapter of the entire accusation, I should still like to examine the question, if the defense of the defendant that he actually could not have had any knowledge about the terrible crimes which

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happened in the extermination camps, is credible. To this point I should first like to present the testimony of a French doctor who himself was a prisoner in an extermination camp for a long time. This is GOUTBLEN, M.D., from Montgeron (Seine-et-Oise) who writes in RF 107:

"It is difficult for a normal man to conceive an exact picture about a concentration camp which is designated in the German language by the two letters "K.Z.".

It is difficult for various reasons: first of all, a man educated according to the principles of our civilization which is completely ruled by the elementary Christian humanitarian doctrine cannot believe the truth of the statements made by the victims of so many atrocities; the sadism, the exaggerated refinedness concerning sufferings is above the normal capability of perception; furthermore, the Nazis have tried to disguise their crimes in a hypocritic way, so that a foreigner who would have inspected a concentration camp two or three years ago would have been impressed by the order and cleanliness in it.

If a jurist had examined the execution cases, he would always have found at least sufficient reasons, if not valid ones, for their justification. Finally, if a doctor had searched for medical documents, he could have very easily concluded normal causes of death.

That is how heavy the curtain was, which covered the concentration camps, and which the SS kept carefully and jealously down. The SS tried to give a legal appearance to their crimes; the thing in question here is a

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characteristic appearance of Hitlerian hypocracy."

In a similar way the Jesuit father KUE LE also expresses himself in his book: " The concentration camps, a question of conscience for the German people." He writes: Page 19 ....." and he believed to be able to prevent the self-unmasking by an absolutely tight ring of silence with which he surrounded his works. This ring was closed so tightly that a German had to travel abroad, in order to learn something concrete about the camps and to read there about the "Soldiers of the Peatbog" (Moorsoldaten). At home books like these did not exist, and one learned only very little from mouth to mouth. Nobody got out of the worst camps, and the perpetrators of the crimes themselves were "liquidated" from time to time, so that they could not tell anything. But the few who got out of the more moderate camps were so much intimidated that they gave only quite general, obscure hints, quite enough, in order to create in the entire people a general feeling of horror of these mysterious places.

But even the little which went from mouth to mouth never came to the knowledge of higher officials of the Third Reich. Because if they went after these things, the police learned about it and the latter then took care of it that the bearers of such "atrocity propaganda" kept silent. Therefore, as time went on, one refrained from telling something to such officials.

But the most important testimony is that of one who knows, who himself had an active share in the liquidation of the Jews. n 25 June 1946 DIETER WISLICENY, the special representative of EICHMANN who was in charge of the liquidation of the Jews, was questioned as witness by the appointed judge of this Tribunal.

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He stated that commissions of the International Red Cross or foreign diplomats were guided to Theresienstadt, in order to simulate the normal status of the accomodation. The Jews who were brought to Auschwitz were forced to write postal cards before they were murdered; these postal cards were then mailed at long intervals, in order to create the impression, as if the persons were still alive. He has invited different representatives of the press. To the explicit question: "Under whose jurisdiction was the Jewish question in the occupied countries, under the commander of the regular police, the Security Police, or the Security Service?" he gave the answer: "According to my knowledge, the Jewish question in the other occupied countries was an affair of the Senior SS and Police Officer, pursuant to a special order by HIMMLER!"

In order to make the deception even more intensive, 500 Reichsmark were for instance demanded by the Slovak government for every Jew as settlement contribution. I have reproached the defendant with this, and he told me that HIMMLER also demanded from him a settlement contribution of 400 Reichsmark for every Dutch Jew he as Reich Commissioner refused this in consideration of the incomplete statements concerning the actual settlement of the Jews and with the reference that the final settlement would have to be left for the time of peace.

At his own initiative the defendant has also pointed during his eximination to individual cases of sterilization. The suggestions I made to have the letters written by SEYSS-Inquart to HIMMLER procured as evidenc

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show the following facts, in conjunction with the statement of the defendant.

Contrary to the statement of the then 18 year old informant Hildegard KUNZE, SEYSS-INQUART never reported through any sort of official channels to HIMMLER about the Jewish question.

SEYSS-INQUART rather demanded of HIMMLER not to aggravate the situation of the Jews in the Netherlands any further, and he referred in this connection to the measures which had been carried out in the meantime against the Jews and which exceeded the measures in the Reich, pointing out at this occasion the cases of sterilization.

SEYSS-INQUART took immediately a stand against the sterilization of women and stated to the Christian churches that no coercion must be exercised. As a matter of fact, no further cases occurred after a short period.

With respect to the case itself, the defendant can only be made responsible insofar as he did not take a stand against it immediately, without being certain, however, to be able to prevent the act. The reasons for the attitude of the defendant becomes evident from the letter which was requested as evidence it was the worry that the situation of the Jews could be made worse and the supposition that these Jews would be spared further attention from the police in the future.

In any case, insofar as measures against the Jews originated from the defendant, they were issued only as measures against enemy foreigners for reasons which the defendant mentioned in his speech of 21 March 41 in Amsterdam, whatever happened beyond that, took place on the express order

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of the Reich Central Agencies, especially Heydrich and that primarily through organs of these Reich Central Agency themselves.

A further point of the indictment is the claim that the defendant as Reich Commissioner, in accordance with the planned extermination and weakening-policy toward the occupied countries, had deliberately neglected the food supply of the Dutch, which had finally resulted in a starvation-catastophe. Claims to this effect appear to be refuted by the testimony of witnesses Dr. Hirschfeld and von der Wense, as well as by those of the defendant himself. The whole food supply machine remained from the very beginning under Dutch direction in the interests of the population, although it was known to the Reich Commissioner, that it was just in this field that leading cells of the resistance movement had established themselves. The food supply in the Netherlands was most assuredly not worse than in Germany, from where in particular bread-grains were supplied. As late as the year 1944, the food value consisted of 1800 calories, before that 2500 calories, to which there were still additions of the utmost variety. The Reich Commissioner also succeeded in bringing to a halt the knapsack-traffic of the Wehrmacht which was mentioned in the crossexamination, through intervention with the Reich Food Administration, even if it was only in the year 1943. To what extent the Dutch food economy was supported by the defendant, as for example by furthering the N.O. Polders, by countering the extremely great demands of the Reich is confirmed by the witness von der Wense.-
That the Dutch manufacture of nitrogen could be reserved for Dutch agriculture until September 1944 is the exclusive

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achievement of the defendant. From autumn 1944 on, the situation in the field of food supplies deteriorated considerably. The country for a large part had become a war zone after the invasion, and the transportation routes had been smashed through innumerable air attacks. This had the result that a difficult food situation was caused, particularly in the West of Holland, where millions of people wer compressed into a small area in three major cities. Considering the small number of occupation troops, it would already have been a giant blunder in itself to drive these crowded masses intentionally to desperate resistance through starvation.

When now in September 1944 a strike of railway workers and shipyard workers broke out, caused by the London government-in-exile, which was counting on a favorable conclusion of the battle near Arnheim and with a German collapse in the very near future, then viewed from the standpoint of international law, this was an emergency. in which the country had placed itself toward the occupant. It was natural that the Wehrmacht occupied all available shipping space in order to secure their food supplies, for their own defense. In order to avoid repetition, may I refer to the testimony of von der Wense and Dr, Hirschfeld and state here as the most important fact that the witness Dr. Hirschfeld testified that the Reich Commissioner gave the order for rescinding the blocking of shipping traffic already on 16 October 1944. He had been able to count on the fact that the blockade of 4 weeks, which was not planned as a reprisal measure, would not cause any damage because sufficient food-stocks were on hand or could be sent into Holland in the months of November and December.

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He actually effected already the rescinding of the embargo at an earlier time, the establishment of a special transport organization and the importing of food stocks from the northeastern provinces by means of German means of transportation. As the failure of the Dutch transport organization, the constant day and night attacks of enemy planes, sabotage of the resistance movement and last of all a great shortage of coal hampered the supply action, the emergency caused by the strike still cannot be in any way charged against the defendant as a criminal offense. In any case, the statistics presented by me have shown that during the entire period of occupation until the middle of 1944, the population steadily increased and that general living conditions under wartime considerations did not suffer a considerable deterioration at all.

As the food situation deteriorated more and more throughout the war, the defendant cared for the importing of food stocks on German transport trains and also furnished them for children, from German Wehrmacht stocks. He demanded supporting actions of the churches and of the Red Cross, although the Geneva insignia was repeatedly misused by the resistance movement. The Crown Prince of Sweden, as President of the Swedish Red Cross, expressed his special gratefulness to the Reich Commissioner. The Reich Commissioner finally contacted the Dutch government-in-exile through its trustees and in this manner initiated the conclusion of an agreement with the Allied Supreme Command, whereby the subsistence of Holland was secured and the occupation was effectively brought to an end. In Allied military circles at that time

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one still figured on 60 days' resistance. The German occupational troops in the Netherlands would certainly have been able to do this, although this would have caused the destruction of the country and its population.

I come now to the last point of the French indictment, to that of the floods and destruction caused by the occupying power. If the Prosecution had not brought up this point, then I as defense counsel would have discussed this matter before the Tribunal, because this matter especially gives the defendant the opportunity of appearing in another light, for him. In referring to the testimony of the witnesses Wimmer, Schwebel and Dr. Hirschfeld and General von Kleffel, I should like to state the following briefly: It should be known to the Tribunal, that 40% of the total land level in the Netherlands lies below sea level. In the course of hard work for centuries, soil was wrested from the sea again and again and changed into fertile farming land. Powerful dikes protect the land; locks and pumping installations regulate the entry of water and water traffic in the interior of the country. The constant struggle against storms and water have turned the Dutchman into a proud and freedom-loving character. "God has created the earth, we have made our land ourselves," says a Dutch proverb.

When the Canadian troops thrust forward toward the North, the Reich Commissioner, contrary to the expectations of many persons, did not take the way into the Reich from Groningen, but returned to The Hague in order to carry his responsibility until the end. He feared that the collapsing Reich might reach a policy of catastrophe which would lead to destruction, in an exposed country like Holland where 271 people live in one square kilometer.

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The Gothic battle, in which everything is exterminated, became a fixed idea in many heads. Goebbels, after all, has declared braggingly, that if they must go, they would slam the door with such a bang that the whole world would hear it. The Reich Commissioner admonished such ideas. The "Scorched earth" order actually came, and it would have meant the destruction of all technical facilities, including dams and lock facilities in Holland and of 2/3 of the country. In unison with Minister Speer and Doenitz all this was prevented. This has also been confirmed in my questionnaire by Commander-in-Chief General von Kleffel and been acknowledged by the Chief of Staff of the American Army, Bedell Smith. Historical structures were also to be destroyed, as has been testified by Schwebel. The defense counsel of General Christiansen informed me that besides the technical troops of the Wehrmacht which carried out detonations and floodings justified by the war situation, men sent by Himmler also appeared, in order to carry out destructions behind the back of the Wehrmacht. All this was prevented by the intervention of the Reich Commissioner, who has conscious of his responsibility, and the country was saved to a great extent from destruction which could never again have been repaired. Since May, 1932 there has been a simple memorial on the dam of the Zuidersee, the largest water structure which has ever been constructed, which bears no name whatsoever, only the proverb: "Een volk dat leeft, bouwt aan zijn toekomst."
"A nation that lives builds on its future." Regardless of how the Trials may end, perhaps some day the time

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will come when the brief words will be added under this proverb: "Saved from destruction by Seyss-Inquart."

And so I have also reached the conclusion of the second accusation complex.

Slowly the curtains are beginning to fall in the act of the supposed conspiracy. I ask you, however: "Is a man, who in the middle of a struggle for life and death of his nation, is placed at the head of the administration of an enemy country and has tried again and again to prevent or decrease attempted excesses, a creature who could accordingly be described as a ruthless and arbitrary despot and war criminal?

However, I would not want to bring my discourse to a conclusion without also expressing some general thoughts on the Trials. I esteem France and her old culture, and I have considered it an honor to be allowed as an attorney to cross swords with Frenchmen in these proceedings. I have listened to the speech of the French Chief Prosecutor Francois de Menthon with deep attention and inner sympathy. However, it cannot remain quite undisputed. De Menthon has described Germany as the eternal enemy of France and alone demanded the most severe penalty, death, against all defendants without exception! He thereby places one of the weaknesses of these trials into the foreground, namely that it will always remain a trial of the victors over the vanquished. One is reminded too strongly of the Gaul Brennus, who with his <u>vae victis</u> ! throws the sword onto the uneven scale. Menthon with this presentation unintentionally obstructs the road to a lasting peace.

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The sin against the spirit is the basic error of National-Socialism and the source of all crimes, says Menthon. National-Socialism is based on racial theory, a product of German mentality. But MENTHON rightly explains that National-Socialism is the farthest point of a doctrinaire development. There are no direct transitions in History but all is rooted in preceding ideas and undercurrents. The events of the 20th Century can only find their explanation in the developments of the preceding century. The final periods of the 19th century are under the influence of exaggerated Nationalism, and in connection therewith it is important to confirm that it was not Germans, but French who first established the racial theory: Count GOBINEAU in his essay sur L'inegalité des races humaines (Essay concerning the inequality of the Human Races" and GEORGE SOREL in his "Reflexion sur la violence (Reflections on Violence). M. MENTHON cites at the end of his statement "La morale internationale" (International Ethics) the work by Politis which I have also mentioned. Politis describes this exaggereted Nationalism being a real international disease, deriving from the 19th century. He in particular mentions the case, of the Frenchman MAURICE BARRÈS. He sees in the sentence: "Que la patrie et-elle tort, il faut lui donner raison (my country right or wrong) – the negation of all ethical laws. I wish to refer to another Frenchman in contrast with M.MENTHON, he is an unknown professor of history. The GESTAPO, the German, and the French police are pursuing him, he frequently changes appearance and name. He is everywhere, we find him in the Massive Centrale, in the AUVERGNE-DISTRICT, in the mountains near GRENOBLE, on the coast at BORDEAUX, und in Paris.

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Wherever he appears army trains are derailed, ammunition depots are blown up and vitally important industrial plants are shut down. He always remembers the words of DE GAULLE: "Our country is in mortal danger, join us, everybody, fight for France!" The name of this man is Georges BIDAULT. The first thing he did after the enemy had been driven out of the country, was to visit severely wounded soldiers in the hospitals. But he does not only go the French, he also visits the German casualties in their wards, saying to them: "Comrades, I wish you speedy recovery and a happy return to your homes." These words of the man who today is leading France, indicate to us the path towards peace in honest and free collaboration of people and nations. HITLER wished to create a new Europe through his own methods, he failed in his efforts. Germany is beaten down to defenslessness, her towns are destroyed, her economic life annihilated. France, one of the oldest countries of Christendom, the country which at the end of the 18th century revealed the rights of men, has therefore today the particular mission and responsibility, of saving the culture of the Occident. For this achievement, however, it is necessary that distrust poisoning the life of all countries must be eliminated. All this in short and common to the trial.

Into your hands, my very esteemed judges, I trustfully put the fate of my client! I very well know that you will consider all the facts which speak for SEYSS-INQUART.

But once more I wish to walk through the streets of Nuernberg, as I have done so often during the

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long months of this Trial, and from the imperial castle, now destroyed, look down on the German countryside. Out of the ruins of the old town rise, hardly damaged, the monuments of the Painter Albrecht DUERER and the Geographer Martin BEHAIM. They are the prophets of German Art and Science! May those two names be symbols for the future, and like a piller of fire, lead the German people from dark misery to the luminous heights of a lasting peace!